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as Plan Administrator, and
MF Global Assigned Assets LLC

**UNITED STATES BANKRUPTCY COURT
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. ¹	:	(Jointly Administered)
-----	:X	
MF GLOBAL HOLDINGS LTD., as Plan	:	
Administrator, and MF GLOBAL ASSIGNED	:	
ASSETS LLC,	:	
Plaintiffs,	:	
vs.	:	Adv. Proc. No. 16-____ (MG)
	:	
ALLIED WORLD ASSURANCE COMPANY	:	
LTD., IRON-STARR EXCESS AGENCY LTD.,	:	
IRONSHORE INSURANCE LTD., STARR	:	
INSURANCE & REINSURANCE LIMITED.,	:	
and FEDERAL INSURANCE COMPANY,	:	
Defendants.	:	
-----	:X	

**ADVERSARY COMPLAINT FOR DECLARATORY JUDGMENT
AND BREACH OF CONTRACT AGAINST DISSENTING E&O INSURERS**

¹ The debtors in the chapter 11 cases are MF Global Holdings Ltd.; MF Global Finance USA Inc.; MF Global Capital LLC; MF Global Market Services LLC; MF Global FX Clear LLC; and MF Global Holdings USA Inc. The Court entered an order of final decree closing the chapter 11 cases of MF Global Capital LLC, MF Global FX Clear LLC, and MF Global Market Services LLC on February 11, 2016.

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Plaintiff MF Global Holding Ltd. (“MFGH”), as Plan Administrator under the confirmed plan of liquidation of MFGH and certain of its affiliates (the “Plan Administrator”), and Plaintiff MF Global Assigned Assets LLC (“MFGAA”), as both the assignee of certain claims, rights, and interests of MF Global Inc. (“MFGI”),² and as an assignee of all claims, rights, and interests of Jon Corzine (“Corzine”), Bradley Abelow (“Abelow”), Henri Steenkamp (“Steenkamp”), David Dunne (“Dunne”), Vinay Mahajan (“Mahajan”), and Edith O’Brien (“O’Brien”)³ under certain insurance policies, including but not limited to all claims and rights of recovery against Defendants Allied World Assurance Company, Ltd. (“AWAC”) with respect to errors and omissions (“E&O”) policy number C007357/005 (the “AWAC Dissenting E&O Policy”), Iron-Starr Excess Agency Ltd. (“Iron-Starr”) with respect to E&O policy number ISF0000508 (the “Iron-Starr Dissenting E&O Policy”), issued on behalf of subscribing insurers Ironshore Insurance Ltd. (“Ironshore”) and Starr Insurance & Reinsurance Limited (“Starr”), and Federal Insurance Company (“Federal”) with respect to E&O policy number 8208-3220 (the “Federal Dissenting E&O Policy,” and collectively with the AWAC Dissenting E&O Policy and the Iron-Starr Dissenting E&O Policy, the “Dissenting E&O Policies”),⁴ bring this adversary complaint for declaratory judgment and breach of contract (including the breach of the implied covenant of good faith and fair dealing) against the Defendants, and allege as follows:

² See infra ¶ [22]. MFGH, as Plan Administrator and also as the managing member of MFGAA, and MFGAA, on behalf of all assigned rights of recovery, are collectively referred to herein as the “MFG Plaintiffs.” MFGH and MFGI are sometimes collectively referred to herein as “MF Global” based on their ultimate parent-subsidary relationship prior to bankruptcy and as insured entities under the insurance policies at issue in this matter.

³ Corzine, Abelow, Steenkamp, Dunne, Mahajan, and O’Brien, as former directors and officers of MF Global, are insured persons under the Dissenting E&O Policies (and collectively referred to herein as the “Individual Insureds”). The Individual Insureds and MF Global are collectively referred to herein as the “Insureds.” The MFG Plaintiffs are assignees of the Individual Insureds’ claims to the proceeds of the Dissenting E&O Policies via the MDL Settlement Agreement (as defined below) and the assignment agreement which forms part of that Settlement, as discussed below.

⁴ Defendants AWAC, Iron-Starr, Ironshore, Starr and Federal are collectively referred to herein as the “Dissenting E&O Insurers” in connection with the Dissenting E&O Policies they sold or issued to MFGH as the named corporation.

I. STATEMENT OF THE CASE

1. This is an insurance coverage action. After four years of contentious legal battles and hard-fought negotiations to resolve their dispute, on July 6, 2016, MFGH, MFGI, Nader Tavakoli as Trustee of the MF Global Litigation Trust, the class representatives of MFGI's former customers, and Sapere CTA Fund, L.P. reached a comprehensive Stipulation and Agreement of Settlement with the Individual Insureds (the "MDL Settlement Agreement") (D.I. 2271-2) to end certain multi-district litigation ("MDL") against the former managers, directors and officers of MFGH and MFGI and resolve related claims. The MDL Settlement Agreement was made possible by the support of the funding insurers who had sold directors and officers ("D&O") and E&O policies to MFGH, and certain reinsurers to those E&O policies, who entered into separate funding agreements to provide their remaining policy limits to fund the MDL Settlement. The MDL Settlement Agreement was approved by this Court on August 10, 2016. (D.I. 2282).⁵ On October 18, 2016, the District Court for the Southern District of New York overseeing the MDL entered an order dismissing the Customer Class Action, as defined in the MDL Settlement Agreement (MDL D.I. 1152). Entry of this order satisfied the final condition to the Effective Date of the MDL Settlement Agreement, and it is anticipated that the Effective Date of the Settlement Agreement will occur on November 18, 2016.

2. The lone holdouts refusing to participate in this settlement are the Dissenting E&O Insurers, who unreasonably and in bad faith failed to contribute a single dollar of their combined \$25 million policy limits even though the MDL Settlement Agreement responded to at least \$480 million

⁵ Citations to "D.I." refer to docket items in the main bankruptcy case of MFGH, Case No. 11-15059. Citations to "MDL D.I." refer to docket items in the consolidated MDL proceedings in United States District Court (the "District Court") before the Honorable Victor Marrero, Deangelis v. Corzine, No. 11-cv-7866 (S.D.N.Y.) (VM) (the "MDL"). Citations to "SIPA D.I." refer to docket items in the SIPA liquidation of MFGI, which was a proceeding before the Bankruptcy Court as Case No. 11-02790 before it was closed on April 4, 2016. Citations to "Adv D.I." refer to docket items in Adversary Proceeding Number 13-01333 (Bankr. S.D.N.Y.). Citations to "Section 105 Adv. D.I." refer to docket items in Adversary Proceeding Number 15-01362 (Bankr. S.D.N.Y.).

in damages asserted as claimed losses under the E&O policies.⁶ The Dissenting E&O Insurers' malicious indifference towards, and elevation of their own financial interests over, the interests of their Insureds in refusing to settle are highlighted by the fact that all other E&O policies participating in the Dissenting E&O Insurers' "tower" of insurance have committed and exhausted their respective policies' full remaining limits in accordance with the terms of the MDL Settlement Agreement. Those underlying E&O policy insurers no longer stand behind coverage defenses with no legitimate basis in fact or under the law. As a result of the Dissenting E&O Insurers' wrongful conduct, instead of realizing the global peace a truly universal resolution with all insurers could have brought them, the MFG Plaintiffs must bring a lawsuit to vindicate rights of recovery under the Dissenting E&O Policies—rights which as demonstrated below should have been honored several years ago to the maximum extent of each policy's limit.

3. By this action, the MFG Plaintiffs seek, among other relief, payment of the full limits of \$25 million under the Dissenting E&O Policies and corresponding damages from the Dissenting E&O Insurers well beyond policy limits in a total sum subject to proof, but no less than \$40 million.

II. NATURE OF THE ACTION

4. On October 31, 2011, MFGH and MF Global Finance USA, Inc., filed voluntary petitions for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code (the "MFGH Bankruptcy Case"). On the same day, the Securities Investor Protection Corporation sought a court order to commence a Securities Investor Protection Act of 1970, 15 U.S.C. § 78aaa et seq., as amended ("SIPA"), liquidation of MFGI, determining that MFGI's customers and customer

⁶ The E&O tower of insurance consisted of seventeen (17) E&O policies and separate "layers" of coverage with combined policy limits totaling \$157.5 million (in excess of a \$25,000 retention), referenced herein as the "E&O Tower." The Dissenting E&O Policies occupy the top three layers of the E&O Tower above the \$132.5 million attachment point. A chart depicting the E&O Tower is attached for the Court's convenience as Exhibit A (depicting a \$25,000 retention, a \$7.475 million first-layer captive policy and then a \$150 million "total aggregate limit" of reinsured and non-captive E&O coverage). All of the insurers comprising the E&O Tower, including the Dissenting E&O Insurers, are sometimes referred to herein as the "E&O Insurers."

funds held by MFGI needed immediate protection under SIPA. The liquidation proceeding began on October 31, 2011, and James W. Giddens was appointed trustee for MFGI's estates (the "SIPA Trustee") on October 31, 2011 (the "MFGI SIPA Proceeding" and together with the MFGH Bankruptcy Proceeding, the "MF Global Cases").

5. The MF Global Cases triggered a wave of claims and lawsuits brought by third-party creditors, customers and claimants against the estates of MFGI and MFGH and separately against the Individual Insureds, alleging breaches of duties, professional liability, statutory violations, negligence, and other wrongful acts in connection with the collapse of MF Global.

6. Prior to MF Global's collapse, MF Global's commodity futures customers (collectively, the "Customers") entrusted money, property and assets valued at well over a billion dollars to MFGI. Under the Commodity Exchange Act (the "CEA") and common law, MFGI and its senior management were required to keep those Customers' funds in segregated accounts for the sole benefit of those Customers.

7. On March 20, 2012, as later amended on May 31, 2012, the Customers filed a proof of claim in the MFGI SIPA Proceeding against MFGI alleging the loss of \$1.6 billion of customer funds resulting from MFGI's breaches of duties and violations of law in connection with the failure to protect those Customers' accounts (the "Proof of Claim") (SIPA Bankruptcy Claim No. 000005523). A similar proof of claim was filed against MFGH for the same loss.

8. The Customers also targeted former directors and officers of MF Global for their role in the loss of customer funds in the days leading up to MFGI's collapse. In November 2011, a series of class actions were commenced against the Individual Insureds and these cases and others were consolidated into the MDL captioned as In re: MF Global Holdings Limited Investment Litigation, No. 12-MD-2338. Through the MDL, the Customers asserted claims for damages, including but not

limited to the recovery of missing or now unavailable funds from MFGI's customer accounts totaling \$1.6 billion as a result of MFGI's and the Individual Insureds' wrongful acts (the "MDL Customer Class Action," and together with the Proof of Claim, the "Customer Claims").

9. As the MFGI SIPA Proceeding moved forward, the SIPA Trustee worked to reduce the "shortfall" in customer funds from MFGI's customer accounts via recovery of MF Global assets from third parties and through settlements.

10. On or before May 5, 2014, the SIPA Trustee determined that the unrecovered amount of customer funds remained at \$548.4 million. On the same day, the SIPA Trustee demanded payment of the limits of the Dissenting E&O Policies and the other underlying E&O insurer policies comprising the \$157.5 million E&O Tower. (See infra ¶ 73 & Ex. F). The SIPA Trustee stated that the \$1.6 billion in losses to MFGI's Customers and the almost \$550 million remaining shortfall in customer assets dwarfed the remaining limits of the E&O Tower (at the time equaling approximately \$143 million due to defense costs erosion). (Id.)

11. Thus, at least as early as May 2014, there was no legitimate dispute that the Dissenting E&O Insurers had a coverage obligation for their Insureds' losses relating to Customers through and up to the combined limits of the Dissenting E&O Policies. The Customer Claims alleged wrongful acts by the Insureds and sought losses covered under the express terms of the Dissenting E&O Policies. The Dissenting E&O Insurers had no good faith basis to deny coverage at that moment. Moreover, the Customers' damages, as irrefutably determined and quantified by the SIPA Trustee and confirmed by a series of stipulations, settlements and court orders, were far in excess of the full E&O Tower limits, including those under Dissenting E&O Policies, warranting an immediate payment from the Dissenting E&O Insurers' full available policy limits totaling \$25 million.⁷ But the

⁷ As previously noted, MFGAA is the assignee of MFGI's rights with respect to the Dissenting E&O Policies. (See SIPA D.I. 8855).

Dissenting E&O Insurers refused to pay the covered loss sustained by the Insureds and still refuse to pay that covered loss as of the date of this action.

12. On October 24, 2015, MF Global, through counsel, sent correspondence once again demanding coverage on behalf of MFGAA, as the assignee of MFGI, informing the Dissenting E&O Insurers that the shortfall in customer property had only been marginally decreased by unanticipated estate recoveries to \$484 million. (See infra ¶ 84 & Ex. H). MF Global emphasized that the bankruptcy court had approved and ordered the SIPA Trustee's advancement of the Customers' allowed net equity claims to effect a one-hundred percent distribution. In that letter, MF Global demanded the full remaining limits of the E&O Tower, including the \$25 million of available limits from the Dissenting E&O Policies, to cover only a small portion of MFGI's losses in the form of damages owed to Customers. Again, the Dissenting E&O Insurers refused to pay, ignoring the plain language of the Dissenting E&O Policies and their clear obligation to provide coverage.

13. While the Dissenting E&O Insurers were rejecting MFGI's reasonable and proper demands for coverage, the Individual Insureds were simultaneously experiencing a similar rejection by the Dissenting E&O Insurers of the respective policy obligations owed to them. For years, the Individual Insureds had defended themselves in the MDL Customer Class Action while being unable to reach settlement of the claims being pursued against them. Then, after a prolonged, court-ordered mediation process, the Individual Insureds, MF Global, and other parties finally arrived at the preliminary terms of the MDL Settlement Agreement, crafted to resolve the MDL Customer Class Action, the Proof of Claim, and other matters relating to the events surrounding the collapse of MF Global. On or about November 30, 2015, a term sheet was executed with the consent of various D&O and E&O insurers, all of whom were willing to contribute their respective remaining limits of liability to fund the MDL Settlement Agreement and no longer deny payment by hiding behind

reserved coverage defenses. Presented yet again with another opportunity to honor their coverage obligations to their Insureds, the Dissenting E&O Insurers denied coverage, did not consent to settle and stated they were unwilling to contribute a single dollar to the parties' collective settlement efforts.

14. On July 6, 2016, the Insureds and counterparties executed the MDL Settlement Agreement with the commitment of the full remaining limits of the E&O Tower from all insurers other than the Dissenting E&O Insurers and their \$25 million in policy limits under the Dissenting E&O Policies. Almost five years since MF Global's collapse and after tens of millions of dollars of costs, fees, and expenses had been incurred in hard-fought litigation, related bankruptcy proceedings, and failed settlement efforts (involving multiple rejected settlement demands) to arrive at a global resolution, the Dissenting E&O Insurers cemented their dubious legacy by improperly avoiding their coverage obligation for a final time. Throughout, they had let other insurers and parties do the hard and expensive labor of settlement and always put their own respective financial interests ahead of their Insureds.⁸

15. As a result of the Dissenting E&O Insurers' wrongful conduct and unreasonable denials of coverage, the MFG Plaintiffs seek an order from this Court declaring that: (a) the respective losses incurred by MFGI and the Individual Insureds in connection with the Customer Claims are covered under the Dissenting E&O Policies, (b) the respective losses incurred by MFGI and the Individual Insureds in connection with the Customer Claims are far in excess of the attachment points and limits of the Dissenting E&O Policies totaling \$25 million in excess of \$132.5 million in underlying E&O insurance in the E&O Tower, and (c) the limits of the Dissenting E&O

⁸ The MFG Plaintiffs are the assignees of the Individual Insureds' claims to the proceeds of the Dissenting E&O Policies via the MDL Settlement Agreement and the assignment agreement which forms part of that Settlement. (See D.I. 2271, 2291).

Policies are currently due and owing to MFGAA as the assignee of all coverage claims and rights of recovery of MFGI and the Individual Insureds.

16. The MFG Plaintiffs also seek all damages recoverable under the law for the Dissenting E&O Insurers' breaches of the Dissenting E&O Policies, as well as their respective breaches of the implied covenant of good faith and fair dealing within those policies. More specifically, and by way of example and not limitation, the Dissenting E&O Insurers received and rejected MFGI's and the Individual Insureds' written demands for coverage to resolve the Customer Claims within or at the Dissenting E&O Policies' limits, which included detailed explanations as to why their refusals to provide coverage are unreasonable and their purported coverage defenses are baseless. They rejected all reasonable settlement offers, never budging from their clearly improper and unsupportable grounds for denial and never participating meaningfully in global settlement negotiations. Instead, they unduly prolonged the prosecution and settlement of the MDL Customer Class Action and related litigation, forcing MF Global and the Individual Insureds to incur tens of millions of dollars of unnecessary attorneys' fees, costs and related expenses. Indeed, the Dissenting E&O Insurers have remained steadfast in this regard, despite the fact that all other E&O policies participating in the E&O Tower are now fully committed to the MDL Settlement Agreement and have paid their respective policies' full remaining limits in accordance with the terms of the MDL Settlement Agreement. In other words, all E&O policies and their limits underlying the Dissenting E&O Policies were committed to payment in full to account for a portion of the Insureds' covered loss (in the amount of \$132.5 million) under the MDL Settlement Agreement and for prior defense cost payments to the Individual Insureds.

17. The Dissenting E&O Insurers' improper denials of coverage and failures to fairly and properly investigate and resolve these claims in good faith have resulted in significant compensatory

and consequential damages suffered by the MFG Plaintiffs, as assignees of MFGI and the Individual Insureds. Subject to proof, those excess-of-policy-limits damages already exceed \$40 million and continue to accrue.

III. JURISDICTION AND VENUE

18. This adversary proceeding is commenced pursuant to Rules 7001 and 7003 of the Federal Rules of Bankruptcy Procedure.

19. The Court has jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 1334(b) and (e). This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). MFGH and MFGAA consent to the entry of final orders or judgment by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution. The Court expressly retained broad jurisdiction under Article XII of the Plan (D.I. 1382 at 73-74) and in the Order Confirming Amended and Restated Joint Plan of Liquidation (D.I. 1288 at 42 ¶ 89), and this proceeding is part of the liquidation of estate assets under the Plan. The Court has core jurisdiction over this dispute which involves the disposition of property of the estate and which requires interpretation and enforcement of agreements and orders over which this Court expressly retained exclusive jurisdiction. (See, e.g., infra ¶¶ 22, 55-56, 62, 92, 100). The Court also has in rem jurisdiction over the Dissenting E&O Policies and proceeds. This Court's exercise of its jurisdiction is necessary to preserve the objectives of the Bankruptcy Code and to avoid inequitable distributions as the Plan Administrator, under the supervision of the Court, marshals one of the final remaining substantial assets of the Debtors' estates. As described further below, resolution of this action is inextricably intertwined with the numerous settlements and orders entered by the Court throughout the MF Global Cases. Accordingly, this Court should exercise its core jurisdiction and preside over this coverage action until a final adjudication, and dismiss or stay any collateral proceedings commenced by the

Dissenting E&O Insurers, including a notice of arbitration sent by AWAC on February 11, 2016, as described herein.

20. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

IV. THE PARTIES

A. MFGH

21. MFGH was a holding company organized under the laws of the State of Delaware and the ultimate parent for several subsidiary companies and affiliates, most notably MFGI. MFGH serves as the Plan Administrator under the confirmed plan of liquidation in the jointly administered chapter 11 cases of MFGH and certain affiliated debtors (collectively, the “Debtors”).⁹ As Plan Administrator, MFGH is responsible for liquidating all property under the Second Amended and Restated Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code, dated April 5, 2013 (D.I. 1382) (the “Plan”), and making distributions to creditors of the Debtors’ estates. As managing member of MFGAA, the Plan Administrator is ultimately responsible for the assets held by MFGAA, including the pursuit of the claims it owns, and distributing the proceeds of those claims *pro rata* in accordance with the respective amount of allowed claims against MFGI held by the Debtors.

B. MFGAA

22. MFGAA is a limited liability company formed under the laws of the State of Delaware on August 26, 2015. On August 19, 2015, the Bankruptcy Court entered an order approving the Sale and Assumption Agreement between the SIPA Trustee and the Plan Administrator, through which MFGAA, as the designee of MFGH, was assigned all claims, rights, title, and benefits of MFGI with

⁹ As noted under the caption, the Debtors consist of MFGH, MF Global Finance USA Inc., MF Global Capital LLC, MF Global FX Clear LLC, MF Global Market Services LLC, and MF Global Holdings USA Inc. On February 11, 2016, the Court entered an order of final decree closing the chapter 11 cases of MF Global Capital LLC, MF Global FX Clear LLC, and MF Global Market Services LLC.

respect to certain assets. (See D.I. 2123; SIPA D.I. 8855). This Court retained jurisdiction “with respect to all matters arising from or related to the interpretation or implementation” of the order approving the Sale and Assumption Agreement. (D.I. 2123 at 15). MFGAA now holds the right to recover on all claims previously held by MFGI’s estates, including its direct claims to proceeds of and under any insurance policies, including the Dissenting E&O Policies. MFGI and MFGH are insured entities under the Dissenting E&O Policies, and MFGI incurred the covered loss by reason of the Customer Claims. Additionally, as a result of the MDL Settlement Agreement and the assignment of rights against the Dissenting E&O Policies by the Individual Insureds (explained further below), MFGH and MFGAA now hold the right to recover on the Individual Insureds’ claims under the Dissenting E&O Policies.

C. AWAC

23. Upon information and belief, AWAC is a specialty reinsurance company that underwrites property and casualty insurance and reinsurance. AWAC was incorporated under the laws of Bermuda in November 2001 and is headquartered in Bermuda. AWAC underwrites risks located throughout the United States and in the State of New York. Upon information and belief, AWAC markets its insurance policies to the general public and sells a substantial volume of insurance policies to entities and individuals domiciled or conducting business in New York covering risks and liabilities occurring within New York. For the policy period from May 31, 2011 to May 31, 2012, AWAC sold and issued the AWAC Dissenting E&O Policy to MFGH bearing policy number C007357/005, providing \$15,000,000 in excess coverage immediately above the attachment point of \$132,500,000 in coverage provided by underlying policies and a self-insured retention. A copy of the AWAC Dissenting E&O Policy is attached hereto as Exhibit B.

D. IRON-STARR, IRONSHORE and STARR

24. Upon information and belief, Iron-Starr is a specialty lines insurance managing general agency. Iron-Starr was incorporated under the laws of Bermuda in February 2009 and is the managing general underwriting agency writing on behalf of affiliated insurance companies operating out of Bermuda, including but not limited to Defendants Ironshore and Starr (which are both incorporated under the laws of Bermuda). Upon information and belief, Iron-Starr on behalf of subscribing insurers markets its insurance policies to the general public and sells a substantial volume of insurance policies to entities and individuals domiciled or conducting business in New York covering risks and liabilities occurring within New York. For the policy period May 31, 2011 to May 31, 2012, Iron-Starr sold and issued the Iron-Starr Dissenting E&O Policy to MFGH bearing policy number ISF0000508, providing \$5,000,000 in excess coverage immediately above the attachment point of \$147,500,000 in coverage provided by underlying policies, including the AWAC Dissenting E&O Policy, and a self-insured retention. This policy was issued on behalf of subscribing insurers Ironshore, responsible for a 70% part of the \$5 million limit of liability, and Starr, responsible for a 30% part of the \$5 million limit of liability. A copy of the Iron-Starr Dissenting E&O Policy is attached hereto as Exhibit C.

E. FEDERAL

25. Upon information and belief, Federal sells property and casualty insurance to businesses and individuals. Federal was founded in 1901 and is incorporated under the laws of Indiana with its principal place of business and headquarters located in New Jersey. For the policy period from May 31, 2011 to May 31, 2012, Federal sold and issued the Federal Dissenting E&O Policy to MFGH bearing policy number 8208-3220, providing \$5,000,000 in excess coverage immediately above the attachment point of \$152,500,000 in coverage provided by underlying

policies, including the AWAC Dissenting E&O Policy, the Iron-Starr Dissenting E&O Policy, and a self-insured retention. A copy of the Federal Dissenting E&O Policy is attached hereto as Exhibit D.

V. FACTUAL BACKGROUND

A. The Dissenting E&O Policies

26. The Dissenting E&O Policies are considered “follow form” excess policies because they incorporate by reference and adopt the terms and conditions of a lower-level policy in the E&O Tower. In this case, the Dissenting E&O Insurers agreed that the “followed” policy is MFG Assurance Company Limited (“MFG Assurance”) policy number 1-18002-00-11 (the “Followed MFGA Policy”). As such, the provisions within the Followed MFGA Policy largely control the substantive coverage disputes at issue in this proceeding. A copy of the Followed MFGA Policy is attached hereto as Exhibit E.

27. The Dissenting E&O Policies occupy three layers at the very top of a tower of seventeen (17) professional liability insurance policies – *i.e.*, the E&O Tower – providing a total of \$25 million of available coverage once \$132.5 million of underlying insurance has been exhausted, including payment of a \$25,000 retention.

28. The policies in the E&O Tower underlying the Dissenting E&O Policies consist of the Followed MFGA Policy, twelve (12) other insurance policies issued by MFG Assurance (backed by reinsurance which in part paid the Individual Insureds’ defense costs and contributed to the MDL Settlement Agreement), and one policy sold and issued by Federal (the “Lower Level Federal E&O Policy”), which policy is not the subject of this litigation having committed its full \$5 million policy limit to the MDL Settlement Agreement.

29. The insuring agreement of the Followed MFGA Policy requires the Dissenting E&O Insurers to “pay on behalf of the *insured* for all *loss* arising out of a *wrongful act* which gives rise to a

claim first made against an *insured* by a third party during the *policy period*....” (Ex. E, at 3) (emphasis in original).¹⁰

30. Thus, if (i) the losses incurred by MFGI or the Individual Insureds from the Customer Claims satisfy the plain language of this insuring agreement, (ii) the amount of loss is well in excess of the E&O Tower, and (iii) no exclusion bars coverage as a matter of law, the Dissenting E&O Insurers have an immediate and unqualified duty to provide the full respective limits of the Dissenting E&O Policies totaling \$25 million.

1. Definitions Relevant to Coverage

31. As instructed by the Followed MFGA Policy, the Dissenting E&O Policies cover MFGH and its subsidiaries, including MFGI, as well as their respective directors, officers, and employees, including the Individual Insureds, for any actual or alleged acts, errors, or omissions while performing or failing to perform services provided by MF Global. Specifically, the Dissenting E&O Policies provide:

The *insurer* shall pay on behalf of the *insured* for all *loss* arising out of a *wrongful* act which gives rise to a *claim* first made against an insured by a third party during the *policy period* (or discovery period, if applicable) and reported in writing to the *insurer* pursuant to the terms of this policy. (Ex. E, at 3) (emphasis in original).

32. The “insured” under the Dissenting E&O Policies includes any “insured entity” – MFGH or its subsidiaries, including MFGI – and “individual insured(s).” (Ex. E, at 5-6). “Individual insureds” is defined as a broad-ranging group of employees and persons affiliated with MFGH and its subsidiaries, including but not limited to:

¹⁰ Italicized words and phrases in the Followed MFGA Policy, as adopted by the Dissenting E&O Policies, indicate a special meaning provided in the definitions section of the Followed MFGA Policy and require a different interpretation than their common understanding when reading those policies.

- (i) any past, present or future natural person under a contract of employment (be it full time, part-time or temporary, or be it written or implied) with the *insured entity*;
- (ii) any past, present or future natural person working under the direct control and supervision of the *insured entity*;
- (iii) any past, present or future *director* or *officer* when performing acts coming within the scope of the usual duties of an *employee* of the *insured entity* or while acting as a member of a committee duly elected or appointed by resolution of the Board of Directors of the *insured entity* to perform specific, as distinguished from general, directorial acts on behalf of the *insured entity*. (Ex. E, at 5) (emphasis in original).

33. Under these terms, the following Individual Insureds are eligible for coverage in their capacity as former directors and officers: (i) Jon S. Corzine, former Chairman and Chief Executive Officer of MFGH and President of MFGI; (ii) Bradley I. Abelow, former President and Chief Operating Officer of MFGH and board member of MFGI; (iii) Henri J. Steenkamp, former Chief Financial Officer of MFGH; (iv) Edith O'Brien, former Assistant Treasurer of MFGI; (v) Vinay Mahajan, former Global Treasurer of MFGH; and (vi) David Dunne, former Global Treasurer of MFGH.

34. The Dissenting E&O Policies define "loss," in pertinent part, as follows:

- (i) *defense costs*; and/or
- (ii) damages, *aggravated damages* as permitted by law, judgments (including pre/post judgment interest), restitution orders of a compensatory nature, *claimant's costs*, *co-defendant's costs*, legal costs and expenses awarded against any *insured*; and/or
- (iii) settlements negotiated with the *insurer's* consent (such consent not to be withheld unreasonably). (Ex. E, at 6-7) (emphasis in original).

35. The Dissenting E&O Policies define "wrongful act," in pertinent part, as follows:

any actual or alleged act, error or omission by the *insured*, or by any other person for whose act, error or omission the *insured* is legally responsible, arising out of the provision of, or failure to provide the *services*. For the avoidance of doubt, the term “act, error or omission” as used in the foregoing, shall include, but not be limited to any:

- (i) breach of duty, breach of trust (including, but not limited to, breach of constructive trust) breach of fiduciary duty, neglect, error, misstatement, misleading statement, misrepresentation, libel, slander, omission or breach of warranty of authority; or
- (ii) breach of any statute enacted anywhere in the world (including any statutory provisions and/or any rules or *regulations* made by any regulatory body or authority thereunder, and including any award of any referee, arbitrator, the Financial Services Ombudsman or any other ombudsman appointed by the Secretary of State for Trade and Industry or similar *regulator* or by any self-regulatory organization or by any recognized professional body by whose rules the *insured* is bound),
- (iii) other breach of a duty to a third party which is actionable at law in tort . . . (Ex. E, at 9) (emphasis in original).

36. Accordingly, a “wrongful act” includes any actual or alleged act by any “insured” (or anyone for which the “insured” is legally responsible) that constitutes a breach of general duty, breach of fiduciary duty, neglect, error, breach of any statutory provisions or regulations, or any breach of duty to a third party which is actionable in tort. Falling squarely within this definition are allegations that have been made against MFGI and the Individual Insureds by the Customers through the Customer Claims, including alleged failures to segregate customer account funds in violation of the CEA and related U.S. Commodity Futures Trading Commission (“CFTC”) rules and regulations, as well as alleged breaches of fiduciary duty, professional negligence, negligent oversight, mismanagement or other theories under the common law.

37. The Dissenting E&O Policies define the term “services,” which is integral to the definition of “wrongful act,” as:

financial or professional services or other activities performed by the *insured*, or by any other person for whose act, error or omission the *insured* is legally responsible performed for customers or clients (or a prospective customer or client) of the *insured*, and shall include, but shall not be limited to, all administrative, back office or other operations (including but not limited to technology functions) of the *insured entity* which support the provision of those services or activities. (Ex. E, at 8) (emphasis in original).

38. Notably, the foregoing definition of “services,” the provision of which (or failure to provide) are the basis for a covered “wrongful act,” includes financial or professional services or other activities performed by the insured for customers or clients, and includes all administrative, back office or other operations incident to the provision of services or activities. MFGI’s and its former directors’ and officers’ business transactions, relationship, and dealings with MFGI’s Customers, the safeguards and duties owed to those Customers and their accounts, and decisions made with respect to and directly impacting the handling, segregation, and protection of those Customers’ account funds meant for investment on commodities exchanges, clearly fall within the definition.

39. Under the Dissenting E&O Policies, the term “claim” is defined as follows:

- (i) any suit or proceeding, including any civil proceeding, third party proceeding, counter claim or arbitration proceeding, or a regulatory proceeding brought by any person or entity against an *insured* for monetary damages or other relief, including non-pecuniary relief for a specified *wrongful act*;
- (ii) any written demand from any person or entity seeking monetary damages or other relief, including non-pecuniary relief, from an *insured* for the results of any specified *wrongful act*; (Ex. E, at 4) (emphasis in original).

40. Accordingly, a “claim” includes any suit or proceeding, including any civil or regulatory proceeding brought by any person or entity against an insured for monetary damages, or any written demand from any person or entity seeking monetary damages or other relief from an insured for the results of any specified wrongful act. There is no dispute that the Customer Claims in the form of the Proof of Claim against MFGI and the Customer Class Action against the Individual Insureds both satisfy this definition.

2. Exclusions to Coverage

41. The Dissenting E&O Policies (again, through the adoption of policy language from the Followed MFGA Policy) contain certain limiting clauses and exclusions under which “the *insurer* shall not be liable to make any payment for *loss* in respect of any *claim* under the Insurance Cover or to make any payment under any Extension of [the Policies].” (Ex. E, at 9) (emphasis in original).

42. There is an exclusion entitled “Fines, Penalties,” which excludes coverage for “matters uninsurable under the law pursuant to which [the Policies are] construed.” (Ex. E, at 9).

43. There is also an exclusion entitled “Insured versus Insured,” which excludes coverage for any claim “arising out of, based upon or attributable to any *claim* brought by or on behalf of:”

- (i) an *insured*, or successors or assigns of any *insured*; or
- (ii) any entity that is operated or managed or controlled by any *insured*; or
- (iii) the *policyholder’s* parent company (or any parent or any subsidiary thereof). (Ex. E, at 11) (emphasis in original).

44. However, this exclusion does not apply to any claim:

- (b) brought by an *insured* in respect of an indemnity for a claim by a customer or a client of the *policyholder*;
- (c) any *claim* brought by an *insured* in the form of a cross-claim or third-party claim for contribution or indemnity which is part of,

and results directly from a *claim* that is covered by this policy.
(Ex. E, at 11) (emphasis in original).

45. The Dissenting E&O Policies exclude coverage for any claim “[a]rising out of, based upon, or attributable to:”

(i) the gaining of any profit or advantage to which the *insured* is not legally entitled; or

(ii) an *insured’s* actual or attempted deliberate commission, aiding, abetting, counseling, procuring, inciting, participation in or conniving at any criminal, dishonest, fraudulent or malicious act; or

(iii) any willful violation of any law or regulation binding on an *insured*, (Ex. E, at 12) (emphasis in original).

46. However, the Dissenting E&O Policies provide that this exclusion:

shall only apply to the *insured* against whom it is expressly stated or held by a final adjudication in the underlying *claim* that the subject conduct did in fact occur, provided that the court of adjudication is compelled to find whether the *insured’s* act, error or omission was illegal, deliberate, criminal, dishonest, fraudulent, malicious or willful....(Ex. E, at 12) (emphasis in original).

47. The Dissenting E&O Policies exclude coverage for any claim “arising out of, based upon or attributable to”:

(i) the internal administration or operation of the business of the *insured entity* other than in connection with the provision by the *insured* of *services*; (Ex. E, at 12) (emphasis in original).

48. As set forth below, the Dissenting E&O Insurers, on their own and through counsel for MFG Assurance, have asserted in their communications that these exclusions, in addition to other policy provisions set forth in the foregoing paragraphs are defenses to coverage and, on these bases, have refused to pay the limits or any portion of those limits of the Dissenting E&O Policies, despite the clear existence of covered losses in excess of those Policies’ attachment points and limits and

despite the fact that the rest of the E&O Tower has now paid full limits. For the reasons set forth below, these exclusions and the other policy provisions on which the Dissenting E&O Insurers rely do not bar coverage for MFGI's and the Individual Insureds' respective insurance claims nor were they ever a tenable basis to deny coverage and reject the Insureds' repeated demands for coverage and settlement funding.

B. The Underlying Claims, Lawsuits And MDL Settlement Agreement

1. MDL Customer Class Action Against the Individual Insureds

49. On November 22, 2011, the former Customers of MFGI filed the first of twelve (12) class actions relating to the collapse of MFGH, MFGI, and the affiliated Debtors. These actions were brought against the Individual Insureds alleging, *inter alia*, violations of certain CEA and CFTC regulations pertaining to segregation of customer funds as well as common law claims asserting a shortfall in customer accounts then estimated at \$1.6 billion. The complaints also alleged breaches of fiduciary duties, negligence and mismanagement by the Individual Insureds for failing to adequately protect, handle, segregate, and preserve the Customers' funds maintained at MFGI.

50. On May 21, 2012, these cases were consolidated into the MDL Customer Class Action, and interim Customer representatives ("Customer Class Counsel") were appointed to lead the class. (MDL D.I. 292).

51. On October 19, 2012, this Court approved an amended Continuing Cooperation and Assignment Agreement (the "CCAA") under which the SIPA Trustee, as the successor-in-interest to MFGI, assigned all claims MFGI had against the Individual Insureds to the Customer Class Counsel to prosecute going forward. The Court order approving the CCAA expressly retained jurisdiction to enforce the terms of the CCAA and resolve disputes arising under it. (SIPA D.I. 3764). Thus, the Customers' and MFGI's litigation claims against the Individual Insureds were consolidated into the MDL Customer Class Action.

2. The Customer Proof of Claim Against MFGI

52. In addition to the claims brought in the MDL Customer Class Action, certain Customers filed the Proof of Claim on March 20, 2012, which was later amended on May 31, 2012, in the MFGI SIPA Liquidation Proceeding against MFGI, on behalf of thousands of individual Customers similarly situated. The Proof of Claim's "Amended Statement of Class Claim" alleged that as much as \$1.6 billion in customer money had been lost as a result of MFGI's alleged misconduct and its failure to preserve, protect, and segregate MFGI's customer accounts as required under law. Through the Proof of Claim, the Customers alleged "damages from the [sic] in an amount sufficient to compensate them individually and each member of the putative class for the loss they have sustained as a result of MFGI's conduct, errors and omissions. . . ." (Proof of Claim at 14).

3. The CFTC Action Against MFGI

53. On June 27, 2013, the CFTC filed its Complaint for Injunctive and Other Equitable Relief and for Civil Monetary Penalties Under the Commodity Exchange Act (the "CFTC Complaint") against MFGI, MFGH, Corzine, and O'Brien. The CFTC Complaint alleged breaches of duty and violations of the CEA and related CFTC regulations owed to the Customers and arising from the failure to segregate and misuse of customer funds, as well as claims for failure to report such violations. The CFTC Action was consolidated into the MDL Customer Class Action on July 12, 2013. (MDL D.I. 513).

4. The SIPA Trustee's Claims

54. On July 2, 2013, the SIPA Trustee filed before this Court a motion seeking authorization to enter into a Final Consent Order of Restitution, Civil Monetary Penalty and Ancillary Relief against MF Global Inc. with the CFTC (the "CFTC Consent Order"). (SIPA D.I. 6738). In relevant part, the CFTC Consent Order would resolve the CFTC Action against MFGI and sought to require the SIPA Trustee to seek an order from this Court (i) authorizing the advance of sufficient

funds from the MFGI general estate to repay the remaining shortfall of Customers' account funds still unrecovered and missing, and (ii) finding that the MFGI general estate is subrogated to the Customers' ongoing litigation claims against third parties arising from the shortfall to the extent that such general estate funds were used to repay Customers.

55. The practical impact of the CFTC Consent Order and the SIPA Trustee's motion for authorization, once ordered by this Court, was to allow the SIPA Trustee to seek contribution from the Individual Insureds and others through the continued prosecution of the claims in the MDL Customer Class Action. Thus, the Proof of Claim and the MDL Customer Class Action became the SIPA Trustee's vehicles (after third-party recoveries had largely dried up) to replenish any advanced funds from MFGI's general estate to satisfy the Customer Claims. This Court granted the motion on September 12, 2013, and retained jurisdiction to "hear and determine all matters arising from the interpretation and/or implementation" of the order. (SIPA D.I. 7034).

56. On October 2, 2013, the SIPA Trustee moved this Court to authorize, among other things, the advancement of property from the MFGI general estates to repay Customers (the "NES Settlement") with the understanding that "in exchange for the advances of general estate funds, the claims of MFGI's former customers arising from the shortfall in customer property will belong to, and be pursued on behalf of, the general estate through principles of subrogation, assignment and other similar theories of recovery." (NES Settlement Motion at ¶ 2; SIPA D.I. 7103). This Court granted that motion on November 6, 2013 (the "NES Order"). (SIPA D.I. 7208). The Court retained jurisdiction to "hear and determine all matters arising from or related to" the order approving the NES Settlement. (Id. at 4).

57. The NES Order determined that a \$560 million deficit in customer account funds held by MFGI still remained unsatisfied. Two days later, on November 8, 2013, the District Court entered and approved the CFTC Consent Order without modification. (MDL D.I. 575).

58. On December 20, 2013, Customer Class Counsel filed a motion in the Customer Class Action for preliminary approval of their resolution and settlement with the SIPA Trustee pursuant to which Customers would assign their litigation claims to the MFGI estate in exchange for advances from MFGI general estate assets sufficient to repay Customers for their outstanding losses. (MDL D.I. 607). On December 20, 2013, Judge Marrero, presiding over the Customer Class Action in the District Court, granted preliminary approval of the NES Settlement. (MDL D.I. 609).

59. On February 20, 2014, Judge Marrero, presiding over the Customer Class Action in the District Court, affirmed this Court's November 6 NES Order approving the advance of general estate assets, holding that this Court "based its determination on an adequate record and with a substantial basis in facts." *Abelow v. Giddens*, No. 13-08893 (VM) (S.D.N.Y. Feb. 20, 2014) [Docket No. 38].

60. On March 14, 2014, Judge Marrero granted final approval of the resolution and settlement between the SIPA Trustee and Customer Class Counsel pursuant to which the Customers assigned their litigation claims in the MDL Customer Class Action to the SIPA Trustee. (MDL D.I. 697).

61. On or about April 14, 2014, the SIPA Trustee disbursed his final payments to Customers from MFGI general estate funds, resulting in a one-hundred percent satisfaction of those Customers' net equity claims.

62. On August 19, 2015, this Court approved the Sale and Assumption Agreement by which the SIPA Trustee assigned certain of his claims, rights, benefits, title and interest of MFGI to

MFGH and its designee, MFGAA, including but not limited to claims of recovery against any E&O Insurer or policy insuring MFGI (including the Dissenting E&O Insurers with respect to the Dissenting E&O Policies) and all litigation claims of the Customers against the Individual Insureds in the MDL Customer Class Action up to the amount of those Customers' net equity claims. (SIPA D.I. 8855). The order approving the Sale and Assumption Agreement expressly retained jurisdiction "with respect to all matters arising from or related to the interpretation or implementation of this Order." (Id. at 15).

C. The Customer Claims Against MFGI And The Individual Insureds Resulted in Covered Losses Under The Dissenting E&O Policies

63. The Dissenting E&O Policies require the Dissenting E&O Insurers to pay for any "loss" sustained by any "insured" – including MFGH, MFGI, and the Individual Insureds – arising from a "wrongful act" giving rise to a "claim" made during the "policy period." Here, the Customer Claims against MFGI and against the Individual Insureds each and collectively satisfied the elements of the insuring agreement in the Followed MFGA Policy obligating the Dissenting E&O Insurers to commit their respective full limits to the Insureds' covered losses.

64. Under the Dissenting E&O Policies, the Proof of Claim and the MDL Customer Class Action constitute a "claim" eligible for coverage. The Followed MFGA Policy's definition of "claim" includes, without limitation, any suit, proceeding or written demands alleging wrongful acts.

65. Under the Dissenting E&O Policies, MFGI and the Individual Insureds are each insured parties with direct rights of recovery against the Dissenting E&O Insurers for underlying claims alleging wrongful acts. The Followed MFGA Policy and Dissenting E&O Policies cover MFGH's subsidiaries and their former directors and officers when serving in their capacity as such.

66. Under the Dissenting E&O Policies, "wrongful act" includes any actual or alleged act by any "insured" or any other person for whose act, error or omission the "insured" is legally

responsible, that constitutes a breach of general duty, breach of fiduciary duty, neglect, error, breach of any statutory provisions or regulations, or any breach of duty to a third party which is actionable in tort arising out of the provision of, or failure to provide, the services.

67. Under the Dissenting E&O Policies, “services” include financial or professional services or other activities performed by the insured or by any other person for whose act, error or omission the insured is legally responsible on behalf of or with respect to customers or clients, and include all administrative, back office or other operations incident to the provision of such services or activities.

68. In this case, the Customers invested funds with MFGI to enable them to access and trade on domestic and foreign commodity exchanges. MFGI and the Individual Insureds were required to segregate and secure these customer funds under the law. In this regard, MFGI and its former managers, including the Individual Insureds, were expected to provide financial services, professional services and perform other activities for customers, chief among them the duty and service of safeguarding the Customers’ assets. Moreover, the Individual Insureds’ alleged breaches of duties and mismanagement of customer funds in their capacity as directors and officers of MFGH and MFGI also constituted an administrative, back office, or other operation incident to the provision of (or failure to provide) financial services or performance of other activities on behalf of Customers.

69. The CFTC Action against MFGH, MFGI, Corzine, and O’Brien similarly alleged acts, errors, omissions, statutory violations, and other breaches of duties committed against the Customers which resulted in the disappearance of hundreds of millions of dollars of customer funds on account with MFGI.¹¹

¹¹ The CFTC Consent Order, approved by this Court and the District Court, and ordering payment to Customers per the resolution of the CFTC Action, could also support the enforceability of the MFG Plaintiffs’ insurance claims.

70. As such, the entire universe of claims by or presented on behalf of MFGI's Customers, including but not limited to the Proof Claim and the claims brought in the MDL Customer Class Action, clearly and irrefutably alleged that MFGI and the Individual Insureds committed "wrongful acts" in connection with the provision of or the failure to provide professional "services" to Customers. Those alleged "wrongful acts" by MFGI, through its directors, officers and other employees, including the Individual Insureds, consisted of violations of the CEA and CFTC regulations, breaches of fiduciary duty, negligence, mismanagement, errors and company-wide misconduct impacting MFGI's Customers and customer funds. Similarly, the alleged "wrongful acts" by the Individual Insureds in their capacity as directors and officers of MF Global, included their alleged distinct violations of the CEA and CFTC regulations and their personal breaches of fiduciary duty, negligence, mishandling of customer funds and tortious interference with MFGI's customer relationships and transactions, as well as their acts in aiding and abetting MFGI's institutional wrongdoing.

71. Finally, the Proof of Claim, the SIPA Trustee's determinations of the customer "shortfall" amount at various stages, this Court's orders approving the advancement of the Customers' allowed net equity claims, the CFTC Consent Order and the MDL Settlement Agreement all demonstrated and firmly established that a covered "*loss arising out of a wrongful act*" was well in excess of the upper limits of the E&O Tower and the Dissenting E&O Policies. There is no requirement in the Dissenting E&O Policies or the Followed MFGA Policy's definition of "loss" that an insured needs a final adjudication or post-trial judgment before that insured may seek recovery.¹²

¹² Notably, the definition of recoverable "loss" includes "damages" and "restitution orders of a compensatory nature," and the separate inclusion of the words "judgments" and "settlements" in the definition indicates that an adjudication is not a prerequisite for coverage.

D. MFGI's Demand For Payment, The Insurers' Putative Coverage Defenses, And The Dissenting E&O Insurers' Wrongful Refusals To Pay

72. The SIPA Trustee reported a claim on behalf of MFGI for coverage under the E&O Tower on March 28, 2012. On May 5, 2014, the SIPA Trustee sent the E&O Tower, including the Dissenting E&O Insurers, a formal written settlement demand for the remaining limits of the E&O Tower to be paid in full on behalf of MFGI in response to the Customer Claims.

1. The SIPA Trustee's May 5, 2014 Demand Letter

73. On May 5, 2014, counsel for the SIPA Trustee sent correspondence to the E&O Insurers, stating as follows:¹³

The SIPA Trustee has now completed the process of determining all customer claims asserted in the SIPA proceeding and has substantially completed the process of marshalling the assets of the MFGI estate. As a result of these exhaustive efforts, the customer claims against MFGI arising from the failure to properly segregate customer funds has been conclusively quantified at \$548.4 million. (Ex. F, at 1-2).

74. The letter went on to explain why coverage could not be legitimately disputed for this loss:

The defendants' conduct in failing to maintain the segregation of customer funds and allowing or directing their use for other purposes are "wrongful acts" under the Policies that "[arise] out of the provision of, or failure to provide the services" for customers or clients. There is nothing more basic to the "provision of services" of a regulated futures commissions merchant ("FCM") and broker-dealer than maintaining custody, segregation, and accurate records of customer property and complying with the customer protection rules governing the conduct of an FCM that allow it to do business. It cannot be disputed that the business MFGI, its officers, directors and employees conducted and the services it provided to its commodities and futures customers were required to be conducted in accordance with the Commodity Exchange Act and regulations issued by the CFTC. These regulations prescribed how those services were to be performed, including maintaining customer funds in segregated accounts. The loss of customer funds

¹³ A copy of the SIPA Trustee's May 5, 2014 demand letter is attached hereto as Exhibit F.

clearly was a loss caused by a failure to provide mandated services to MFGI's customers and "other wrongful acts." (Ex. F, at 3).

75. The letter illustrated that the loss sustained by MFGI was no longer in doubt, but rather realized, quantified, and conclusively determined, and far in excess of the remaining limits of the E&O Tower:

Further, in light of recent decisions from the Bankruptcy Court and District Court, there is no longer any question as to the magnitude of the loss suffered by MFGI's customers as a result of these "wrongful acts." As you are aware, on November 6, 2013, Judge Glenn entered an Order (the "November 6 Order") authorizing the SIPA Trustee to advance funds from MFGI's general estate in order to effectuate a 100% distribution to MFGI's commodities customers.... The November 6 Order explicitly recognizes a \$560 million deficit, which is now \$548.4 million in MFGI's commodities customer estates. . . . MFGA can no longer feign doubt that the customer claims against MFGI are covered, that those claims amount to a damages level that far exceeds the E&O Policy limits, and that such damages represent a covered loss under those Policies. In sum, the \$548.4 million deficit dwarfs the remaining untapped limits of approximately \$146 million in available professional liability coverage. (Ex. F, at 3).

76. The letter concluded with an unambiguous demand for coverage from the entire E&O Tower:

We therefore demand payment of the full available policy limits of the E&O tower in satisfaction of the claim the SIPA Trustee has asserted against this coverage. (Ex. F, at 4).

2. MFG Assurance's July 25, 2014 Response

77. On July 25, 2014, MFG Assurance's counsel responded to the SIPA Trustee's May 5, 2014 demand. MFG Assurance's letter asserted that it would be "premature" to provide a coverage position at that time and set forth purported coverage defenses under the insurance policies of the E&O Tower.¹⁴

¹⁴ A copy of MFG Assurance's July 25, 2014 response letter is attached hereto as Exhibit G.

78. For example, the letter asserted that there is no “loss” under the relevant policies if MFGI merely reimbursed Customers:

First, MFGI must have a qualifying Loss . . . Exclusion 3.2 of the Policies states that there is no coverage for loss in respect of any claim “arising out of, based upon or attributable to or for ... (iv) matters uninsurable under [New York] law....” . . . As a matter of New York law and public policy, amounts paid that are in the nature of restitution and disgorgement are not insurable . . . In this case, the SIPA Trustee concluded that MFGI improperly removed customer funds from segregated accounts to satisfy the company's own liquidity needs, and MFGI therefore was required to pay those funds back to customers. As such, all amounts repaid to the customers by MFGI and/or the estates are disgorgement and restitution of funds that MFGI took from the customers. (Ex. G, at 3-4).

79. The letter also asserted that coverage is precluded by the “Insured versus Insured” exclusion:

Assurance believes a second preclusion of MFGI’s entitlement to coverage of its claim could be found in the Insured vs. Insured exclusion contained in Section 3.9 of the Policies. . . . The SIPA Trustee’s claim for recovery of funds on MFGI’s behalf is precluded because the Claim is presented as on behalf of an Insured (i.e., “attributable to any claim brought by or on behalf of . . . an *insured*, or successors or assigns of any *insured*”). Moreover, MFGI’s claim for Loss can only be based on its allegations against the Individual Insureds. These are manifested in MFGI’s purported admissions in the CFTC Order and in MFGI’s assignment of its professed claims against Individual Insureds to certain plaintiffs’ counsel to prosecute in the MDL. Using third parties in that manner does not alter the fact that MFGI is seeking to assert it has suffered a Loss as a result of the actions or failures of certain Individual Insureds. (Ex. G, at 4-5) (emphasis in original).

80. The letter claimed that there was no “wrongful act” under the relevant policies because the failure to segregate and secure customer funds and the resulting harm were not related to services provided to Customers, but rather were general corporate activities subject to the “Business Risk” exclusion:

...in order to trigger the professional liability coverage provided by the Policies, a Claim must arise out of the provision of or failure to provide Services, a term which, by definition, pertains to certain services or activities performed for customers or clients of the Insured. Based on the facts adduced to date, it is questionable as to whether the alleged actions or failures of Insureds pertained to Services.

* * *

your client's report and the CFTC complaint that he consented to settle make abundantly clear that MFGI's collapse was the result of managerial actions and inactions rather than a failure to provide Services.

* * *

Your client's report and the CFTC complaint also indicate that the Business Risk exclusion may apply, which should be more fully revealed as the MDL develops. (Ex. G, at 7).

81. Finally, the letter suggested that the "Wrongdoing" exclusion may preclude coverage:

We observe that any and all of the prongs in the Wrongdoing exclusion may cause it to apply in this matter, but especially that "the gaining of any profit or advantage to which the insured is not legally entitled" may preclude coverage in this matter. We take particular note of the thrust of the allegations in the complaints and the investigatory findings that MFGI improperly transferred funds from its customers' segregated accounts in order to further its proprietary trading. (Ex. G, at 8).

3. MFGH's October 24, 2015 Letter Addressing Insurers' Coverage Positions

82. On October 24, 2015, counsel for MFGH sent a letter to the E&O Insurers addressing the coverage defenses raised in the July 25, 2014 letter, again demanding coverage.¹⁵ This letter explained why the purported coverage defenses were not supportable, had no basis in law or fact, and

¹⁵ A copy of MFGH's October 24, 2015 letter is attached hereto as Exhibit H.

summarized coverage arguments that were communicated to the E&O Insurers in the period since their July 25, 2014 letter.

83. The letter further explained that “expert reports submitted in the MDL proceedings have yet again confirmed the magnitude of the commodity customers’ losses, determining the balance of the customer funds shortfall to stand currently at \$484 million” an amount still well in excess of the remaining limits of the E&O Tower. (Ex. H, at 3). This letter repeated “the demand for full payment of the remaining policy limits from MFGA and the other E&O Insurers....” (Ex. H, at 4).

84. In response to the E&O Insurers’ defense that New York law prohibits coverage for restitution payments, MFGH’s October 24, 2015 letter explained that this argument is based on an incorrect factual premise and is incompatible with the actual definition of “loss” contained in the Dissenting E&O Policies. (Ex. H, at 10). The public policy rationale for precluding coverage for restitution payments would only arise when the “[i]nsured would retain the ill-gotten gains by transferring the loss to its carrier,” which is not applicable to these facts. (Ex. H, at 10). Moreover, the relevant E&O policies plainly protect MFGI from third-party liability claims by Customers for financial losses, and the E&O Insurers’ position would lead to the absurd result that neither MFGI nor its Customers were protected for any losses or damages with respect to the alleged misuse of customer funds held by MFGI. Finally, the argument against covering payments in the “nature of restitution” (as characterized by MFG Assurance) is inconsistent with the definition of “loss” in the policies, which includes not only “damages” but also “restitution orders of a compensatory nature.” (Ex. H, at 10).

85. MFGH’s October 24, 2015 letter also addressed the “insured-versus-insured” exclusion and its inapplicability to the Customer Claims, whether viewed through the Proof of Claim

against MFGI or the claims in the MDL Customer Class Action against the Individual Insureds. As detailed in the letter, MFGI's contractual rights under the policies were asserted as an "insured entity" in responding to the Customers' claims against MFGI for MFGI's alleged wrongful acts. (Ex. H, at 11). The "insured-versus-insured" exclusion only bars claims brought by an insured against an insured and is clearly not applicable in the instant case which involves claims of third-party customers brought against MFGI. (Ex. H, at 11). In addition, the exclusion does not prevent coverage for the Customer Claims when MFGI's representatives seek contribution from the Individual Insureds for the losses MFGI was forced to pay to Customers as a result of MFGI's alleged wrongful acts. (Ex. H, at 11).

86. With respect to the E&O Insurers' positions regarding the definition of "services" in the policies and the "business risk" exclusion, MFGH's October 24, 2015 letter explained that the segregation and preservation of customer funds, likely the most vital and fundamental obligation of a futures commission merchant such as MFGI, constitutes "a financial or professional service or other activity performed by the Insured." (Ex. H, at 11). Similarly, a narrow reading of the "business risk" exclusion (as required under the law) "will not bar coverage" when MFGI's failure to render services had only an ancillary connection to the company's business operations. (Ex. H, at 11). Stated differently, the exclusion expressly carves out and provides coverage for "services" notwithstanding a connection to the administration of MFGI's business.¹⁶

87. In sum, MFGH's letter and the Insureds' prior correspondence and statements clearly

¹⁶ In addition, MFGH's letter explained that the exclusion would not prevent coverage for any damages recovered in the MDL Customer Class Action against the Individual Insureds once transferred to the SIPA Trustee by virtue of assignment agreements. Among other reasons supporting coverage, the "insured-versus-insured" exclusion expressly carves out and provides coverage for any "cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from a *claim* that is covered by this policy." (Ex. H, at 11 n. 14) (emphasis in the original). Any liability established against the Individual Insureds which results in damages paid to the Customers at very least constitutes a "claim of contribution" held by MFGI represented by the SIPA Trustee (and now MFGAA via assignment). Those recovered funds were to be used by the SIPA Trustee to replenish the general estate for prior advancements to Customers. (Ex. H, at 11).

demonstrated why coverage for the losses described herein could not reasonably be disputed. More importantly, it accurately pointed out that coverage was long overdue.

88. As set forth below, MFG Assurance eventually committed to pay the remaining limits of its thirteen (13) insurance policies (more than \$113 million) in the E&O Tower underlying the Dissenting E&O Policies to resolve the claims in the MDL Customer Class Action and the Proof of Claim through the MDL Settlement Agreement. Federal also committed to pay the \$5 million limit of the Lower-Level Federal E&O Policy, one of its two E&O policies in the E&O Tower, in response to the MDL Settlement Agreement. Those final coverage disbursements have been received subsequent to the effective date of the MDL Settlement Agreement.

89. On the other hand, the Dissenting E&O Insurers have not paid any amount under the Dissenting E&O Policies nor made any commitment to pay any amount under those policies. This refusal has been, and continues to be, inherently unreasonable and improper under the plain language of the Dissenting E&O Policies applied to these facts.

E. The MDL Settlement Agreement And Resolution Of The Customer Class Action Against The Individual Insureds

90. As a result of the E&O Insurers' failure to pay the limits of the E&O Tower in response to the SIPA Trustee's demand for payment in and after May 2014, Customer Class Counsel (on behalf of themselves and MFGI's estates) had no choice but to continue to pursue the Individual Insureds in the MDL Customer Class Action. Specifically, MFGI's advancement of the Customers' net equity claims subrogated the SIPA Trustee to the Customers' litigation claims against, and entitled him to contribution from, the Individual Insureds. Customer Class Counsel also continued to prosecute the MDL Customer Class Action in their own right for additional damages for interest and loss of use not encompassed by the prior assignments of rights with the SIPA Trustee.

91. Responding to and pursuing claims on behalf of the Customers to address the Customers' losses was a costly process for MF Global, involving extensive, expensive litigation-related and bankruptcy-related fees, costs, and expenses. Those losses could have been avoided or substantially reduced if the E&O Insurers, including the Dissenting E&O Insurers, had agreed to commit all available coverage in response to the May 2014 demand.

92. Finally, on July 6, 2016, MF Global, the Individual Insureds and other third parties executed the MDL Settlement Agreement, resolving all underlying claims submitted for coverage under the E&O Tower. Under the terms of the MDL Settlement Agreement, the Individual Insureds agreed to a fixed legal and financial obligation, termed the "Defendants' Financial Obligation," supported by remaining D&O and E&O coverage and their personal assets of up to approximately \$184,058,725.74, subject to a payment formula set forth in the settlement documentation (the "DFO"). (See D.I. 2271). The DFO includes payments totaling approximately \$159,058,725 from various insurance programs and policies, including the E&O Tower, that provided coverage to MFGI and the Individual Insureds. The DFO also includes an ongoing legal obligation of the Individual Insureds to the MFG Plaintiffs until all necessary court approvals and future recoveries from the Dissenting E&O Insurers have been pursued and obtained. The parties to the MDL Settlement Agreement, with the consent of the funding insurers and reinsurers, expressly and irrevocably agreed to the continued exclusive jurisdiction of this Court and the District Court for the administration and consummation of the MDL Settlement Agreement. (See D.I. 2271-2 ¶ 45). This Court's order approving the MDL Settlement Agreement also retained jurisdiction to "enforce and implement the terms and provisions of the MDL Settlement Agreement and resolve disputes thereunder." (D.I. 2282 at ¶ 13).

93. Within the E&O Tower, MFG Assurance and Federal, the insurers responsible for the fourteen (14) policies underlying the Dissenting E&O Policies, committed to pay in full the remaining policy limits on behalf of the Individual Insureds in connection with and towards satisfaction of their respective portions of the DFO under the MDL Settlement Agreement.¹⁷ Despite the fact that the Dissenting E&O Policies are governed by the same material terms as the underlying policies (and their respective policy obligations are triggered by exhaustion of underlying limits for covered losses), the Dissenting E&O Insurers failed and refused to consent to the MDL Settlement Agreement or fund the limits of the Dissenting E&O Policies to fully satisfy the DFO and remaining financial exposures provided in the MDL Settlement Agreement.

94. As part of the MDL Settlement Agreement, the Individual Insureds assigned their rights under the Dissenting E&O Policies to the MFG Plaintiffs. Under the terms of the MDL Settlement Agreement, the \$25 million in combined limits of the Dissenting Policies constitutes a currently unfunded portion of the DFO. The MDL Settlement Agreement also requires certain out-of-pocket payments from the Individual Insureds in excess of and over the limits of insurance proceeds paid pursuant to the Settlement.

F. The Dissenting E&O Insurers' Wrongful Refusal To Provide Coverage For The Individual Insureds' Settlement.

95. During the course of the MDL Customer Class Action, and after the May 2014 demand from the SIPA Trustee against the E&O Tower policies, the Individual Insureds were presented with settlement opportunities in which the Individual Insureds could have resolved the claims against them without any personal liability or financial exposure. However, when these and other settlement opportunities were presented to the insurers in the E&O Tower, those insurers,

¹⁷ MFG Assurance's reinsurance companies honored MFG Assurance's duty to advance defense costs and its consent to the MDL Settlement Agreement. Reinsurance coverage enabled MFG Assurance to exhaust the full remaining limits of its E&O policies in response to the Insureds' demand for settlement funding.

including the Dissenting E&O Insurers, refused to contribute their limits, citing the same baseless coverage reservations included in MFG Assurance's July 25, 2014 letter. As a result of these earlier refusals to settle, the Individual Insureds had no choice but to agree to the language of the executed MDL Settlement Agreement, which involves personal exposure, ongoing legal obligations, and out-of-pocket payments for the Individual Insureds.

96. By refusing to pay their limits on behalf of the Individual Insureds in connection with the reasonable settlement finally embodied within the MDL Settlement Agreement, the Dissenting E&O Insurers have placed their financial interests above those of the Individual Insureds and exposed certain of those Insureds to personal financial exposure in excess of available insurance limits. It is clear that the Dissenting E&O Insurers have been clinging to objectively unreasonable coverage positions in the hope of avoiding their contractual obligations.

G. AWAC's Demand for Arbitration

97. Both the AWAC and Iron-Starr Policies contain arbitration clauses purporting to require arbitration of coverage disputes in Hamilton, Bermuda, applying the substantive law of the State of New York. (Ex. B, at 5; Ex. C, at 4).

98. On February 11, 2016, counsel for AWAC sent correspondence to MFGAA and the Individual Insureds stating its desire to arbitrate whether any of the underlying claims are eligible for coverage under the AWAC Dissenting E&O Policy and naming its party arbitrator. MF Global responded on March 28, 2016, on behalf of MFGAA and the Individual Insureds, rejecting AWAC's assertion of a right to arbitration and reserving all rights to challenge the arbitration provision in the AWAC Dissenting E&O Policy.

99. Ultimately, the parties entered into multiple standstill agreements. AWAC and the Insureds agreed not to take further steps in support of the arbitration and the Insureds agreed they

would not file a competing action or proceeding before this Court or elsewhere during the standstill periods.

100. The last standstill period expired on September 15, 2016, leaving the MFG Plaintiffs free to file the current action against AWAC and the other Dissenting E&O Insurers. By filing this complaint, the MFG Plaintiffs formally contest the right of AWAC (or Iron-Starr) to commence an arbitration in Bermuda outside of the purview of this Court. Specifically, this coverage action is a core proceeding, and this Court's jurisdiction is necessary to preserve the objectives of the Bankruptcy Code and to avoid the potential of inequitable distributions. As noted above, resolution of this coverage action requires the Court to interpret various orders and settlements that it retained jurisdiction over. The allowance of multiple arbitrations to take place with AWAC and/or Iron-Starr, in addition to this coverage action (which would remain pending against Federal whose insurance policy does not contain an arbitration clause) would circumvent this Court's exclusive, retained jurisdiction to interpret and enforce these prior settlements and orders, and lead to numerous complications and inefficiencies, which would impact the administration of the bankruptcy estate. These complications and inefficiencies include, but are not limited to: (i) permitting an end-around this Court's exclusive jurisdiction to interpret and enforce its prior approved settlements and orders; (ii) de-centralization of the remaining disputes in this litigation with a resulting lack of uniformity in rulings and adjudications addressing prior orders and insurance policy interpretation and coverage determinations, (iii) increased litigation costs, and (iv) delay of a potential settlement with the Dissenting E&O Insurers and/or a delay of the remaining distributions.

VI. CLAIMS FOR RELIEF

A. Declaratory Judgment Pursuant to 28 U.S.C. § 2201(a) (Against All Defendants)

101. The MFG Plaintiffs incorporate by reference the allegations of paragraphs 1 through 100 inclusive, as though fully set forth herein.

102. The MFG Plaintiffs, and specifically MFGAA, are the assignees of MFGI's and the Individual Insureds' claims for coverage arising from, under, and against the Dissenting E&O Policies.

103. At all times, the MFG Plaintiffs and their assignors complied with all terms of the E&O Policies, including the Dissenting E&O Policies, and satisfied all duties as insureds under those E&O Policies.

104. There exists an actual and justiciable controversy between the MFG Plaintiffs, as assignees of MFGI and the Individual Insureds as the Insureds under the Dissenting E&O Policies, on one hand, and the Dissenting E&O Insurers, on the other, as to whether the Dissenting E&O Insurers owed and continue to owe the Dissenting E&O Policies' combined \$25 million policy limits to the MFG Plaintiffs.

105. The MFG Plaintiffs desire, and are entitled to, a judicial declaration of their rights and interests in, and the obligations of the Dissenting E&O Insurers under, the Dissenting E&O Policies. Such a declaration will serve a useful purpose in clarifying and establishing the MFG Plaintiffs' ultimate right to recover the proceeds of the Dissenting E&O Policies. This requires the Court to interpret the terms of the Dissenting E&O Policies and establish the rights and obligations of the parties under those Policies in connection with the losses incurred by MFGI and the Individual Insureds in connection with the Customer Claims.

106. The MFG Plaintiffs seek an order from this Court declaring that: (a) the respective losses incurred by MFGI and the Individual Insureds in connection with the Customer Claims are covered under the Dissenting E&O Policies, (b) the respective losses incurred by MFGI and the Individual Insureds in connection with the Customer Claims are far in excess of the attachment points and limits of the Dissenting E&O Policies totaling \$25 million in excess of \$132.5 million in

underlying E&O insurance in the E&O Tower and the retention, and (c) the limits of the Dissenting E&O Policies are currently due and owing to MFGAA as the assignee and designee of all coverage claims and rights of recovery of MFGI and the Individual Insureds.

B. Breach of Contract (Against All Defendants)

107. The MFG Plaintiffs incorporate by reference the allegations of paragraphs 1 through 106 inclusive, as though fully set forth herein.

108. The Dissenting E&O Policies are enforceable contracts providing E&O or professional liability insurance coverage for “loss” arising out of a “wrongful act” which gives rise to a “claim” first made against an insured during the policy period, as those terms are defined in the Dissenting E&O Policies and as detailed herein.

109. MFGH paid all premiums due and satisfied all conditions precedent in entering into the insurance contracts with the Dissenting E&O Insurers.

110. MF Global and the Individual Insureds are insureds under the Dissenting E&O Policies and have complied and continue to comply with all terms and conditions of the Dissenting E&O Policies and satisfied all duties under those Policies.

111. The MFG Plaintiffs are the assignees of all of MFGI’s and the Individual Insureds’ claims for coverage arising from, under, and against the Dissenting E&O Policies.

112. The Dissenting E&O Insurers have been presented with the Customer Claims alleging \$1.6 billion in losses to MFGI’s Customers, a shortfall which had been reduced by the SIPA Trustee’s recovery efforts to a determined, quantifiable loss amount of \$484 million, which far exceeds the attachment points and limits of the Dissenting E&O Policies.

113. The Dissenting E&O Insurers have refused to pay the limits of the Dissenting E&O Policies despite the fact that: (a) the loss amount dwarfs those Policies’ attachment points and limits, (b) they have been provided with material information and documents and detailed explanations

(summarized in the SIPA Trustee's May 5, 2014, and MFGH's October 24, 2015 correspondence) as to why coverage applies and their grounds for reservation are unfounded, and (c) the limits of every policy underlying the Dissenting E&O Policies (which are governed by the same material terms) have now been paid to resolve the Customer Claims and related matters.

114. The Dissenting E&O Insurers' unreasonable refusal to pay their respective full limits as demanded of them is a breach of the terms of the Dissenting E&O Policies, and, as a result of this breach, the MFG Plaintiffs are entitled to the \$25 million in limits of the Dissenting E&O Policies.

115. Further, in taking unreasonable coverage positions, disregarding reasonable settlement offers and improperly refusing to pay their limits, the Dissenting E&O Insurers have violated the implied covenant of good faith and fair dealing present in the Dissenting E&O Policies. Notably, and without limitation, the Dissenting E&O Insurers failed to commit their respective limits under the Dissenting E&O Policies to a settlement in which the Individual Insureds could have avoided personal financial exposure and ongoing legal obligations in excess of available insurance limits. This failure indicates a gross disregard of the Individual Insureds' financial interests — as a result, the Individual Insureds now face personal exposure and out-of-pocket liability beyond the limits of available insurance.

116. Because of these breaches of contract and the implied covenant of good faith and fair dealing, the MFG Plaintiffs are entitled to attorneys' fees in bringing this coverage action and consequential and other damages including, but not limited to, the following: (a) their significant transaction costs in pursuing contribution and other related claims against the Individual Insureds as a result of the Dissenting E&O Insurers' refusal to provide coverage first in response to MFGI's May 2014 demand and then again to MF Global's October 2015 demand, including attorneys' fees, costs, and related expenses incurred by MF Global in connection with a catastrophic loss, (b) the amount of

D&O and E&O insurance limits unnecessarily eroded as a result of increased defense costs incurred by the Individual Insureds in defending against claims that could have been settled had the Dissenting E&O Insurers not improperly refused to provide coverage, and (c) the personal liability, financial exposure, and out-of-pocket payments (both now and in the future pursuant to the MDL Settlement Agreement) owed by the Individual Insureds under the MDL Settlement Agreement, which would have been avoided had the Dissenting E&O Insurers provided coverage in response to the Individual Insureds' repeated demands for coverage, each in amounts to be proven at trial but believed to total no less than \$40 million.

117. In addition, Section 2601 of the New York Insurance Law states no insurance company shall engage in unfair claim settlement practices in responding to New York policyholders' insurance claims. While Section 2601 does not provide a private cause of action, it serves as an evidentiary basis to demonstrate that the Dissenting E&O Insurers did breach the implied covenant of good faith and fair dealing, a contractual obligation read into their Dissenting E&O Policies, for, among other things, exposing the Individual Insureds to personal liability, financial exposure, ongoing legal obligations and out-of-pocket losses in excess of available policy limits by unreasonably refusing to settle covered claims within policy limits on behalf of their Insureds and which also resulted in consequential damages to MF Global.

118. Specifically, the Dissenting E&O Insurers acted with a lack of good faith in breaching their respective Dissenting E&O Policies by, among other things:

- a. Misrepresenting to the Insureds the facts and law applicable to the coverage arguments and defenses at issue;
- b. Failing to respond with reasonable promptness to coverage communications and correspondence sent by their Insureds, including reasonable demands for settlement

- and coverage payments;
- c. Not attempting in good faith to effectuate prompt, fair and equitable settlements of the Customer Claims when their Insureds' liability was clearly imminent or had been established;
 - d. Compelling the MFG Plaintiffs to initiate this action to recover amounts due under the Dissenting E&O Policies with no reasonable ground to deny coverage;
 - e. Disregarding the Insureds' legal, contractual and financial interests so as to advance the Dissenting E&O Insurers' similar interests;
 - f. Failing to investigate and analyze the Insureds' claim for coverage in a fair, impartial and objective manner; and
 - g. Through other acts and conduct as may become evident through full discovery in this action, including, but not limited to, acts and conduct performed with such frequency as to indicate a general business practice or scheme potentially warranting an award of punitive damages.

119. As a direct and proximate result of the acts and omissions of the Dissenting E&O Insurers, the MFG Plaintiffs have sustained and continue to sustain compensatory, consequential, and other damages in an amount not yet determined, but to be proven at trial and believed to be no less than \$65 million.

VII. PRAYER FOR RELIEF

WHEREFORE, the MFG Plaintiffs respectfully request that the Court enter judgment in their favor as follows against the Dissenting E&O Insurers:

A. Declaring that: (a) the respective losses incurred by MFGI and the Individual Insureds in connection with the Customer Claims are covered under the Dissenting E&O Policies, (b) the respective losses incurred by MFGI and the Individual Insureds in connection with the Customer

Claims are far in excess of the attachment points and limits of the Dissenting E&O Policies totaling \$25 million in excess of \$132.5 million in underlying E&O insurance in the E&O Tower, and (c) the limits of the Dissenting E&O Policies are currently due and owing to MFGAA as the assignee and designee of all coverage claims and rights of recovery of MFGI and the Individual Insureds.

B. Finding that the Dissenting E&O Insurers have breached the Dissenting E&O Policies, including the implied covenant of good faith and fair dealing, by improperly and unreasonably failing to pay the limits of those Policies and exhibiting a gross disregard for the interests of their Insureds;

C. Awarding the MFG Plaintiffs and against the Dissenting E&O Insurers actual and compensatory damages in the amount of \$25 million, reflecting the full limits of the Dissenting E&O Policies;

D. Awarding the MFG Plaintiffs other damages, including but not limited to consequential damages, pre-judgment interest, attorneys' fees, expenses and costs, each in amounts to be proven at trial, but believed to be in excess of \$40 million; and

E. Granting such other relief as the Court deems just and equitable.

Dated: October 27, 2016
New York, New York

Respectfully submitted,

/s/ Bruce Bennett

Bruce Bennett

David W. Steuber (*pro hac vice application pending*)

Craig M. Hirsch

JONES DAY

555 South Flower Street, 50th Floor

Los Angeles, CA 90071

Tel: 213-489-3939

Fax: 213-243-2539

- and-

/s/ Jane Rue Wittstein

Jane Rue Wittstein

Edward M. Joyce

JONES DAY

250 Vesey St.

New York, NY 10281-1047

Tel: 212-326-3939

Fax: 212-755-7306

Counsel for MF Global Holdings Ltd.,
as Plan Administrator, and
MF Global Assigned Assets LLC

Exhibit A

MF Global Holdings Ltd.

Professional Liability Insurance Program Structure

May 31, 2011 to May 31, 2012

Total Aggregate Limit = \$150MM

*Purchased
directly –
does not run
through
the captive*

Federal - \$5MM aggregate excess \$145MM
Ironshore (3.5) and Starr (1.5) - \$5MM aggregate excess \$140MM
Allied World Assurance - \$15MM aggregate excess \$125MM
Federal - \$5MM aggregate excess \$120MM
MFG Assurance – \$10MM aggregate excess \$110MM
MFG Assurance – \$25MM aggregate excess \$85MM
MFG Assurance – \$5MM aggregate excess \$80MM
MFG Assurance – \$10MM aggregate excess \$70MM
MFG Assurance – \$10MM aggregate excess \$60MM
MFG Assurance – \$10MM aggregate excess \$50MM
MFG Assurance – \$10MM aggregate excess \$40MM
MFG Assurance – \$10MM aggregate excess \$30MM
MFG Assurance – \$15MM aggregate excess \$15MM
MFG Assurance – \$15MM aggregate excess \$7.5MM
MFG Assurance* – \$7.475MM each single claim excess \$25K
\$25,000 each single claim retention

Reinsurance Purchased by MFG Assurance

Axis Specialty Limited Bermuda - \$10MM aggregate excess \$110MM
New Hampshire (15), ACE American (10) - \$25MM aggregate excess \$85MM
Ironshore Indemnity - \$5MM aggregate excess \$80MM
Illinois National - \$10MM aggregate excess \$70MM
ACE American - \$10MM aggregate excess \$60MM
Axis - \$10MM aggregate excess \$50MM
Everest Indemnity (5), Continental (5) - \$10MM aggregate excess \$40MM
Catlin - \$10MM aggregate excess \$30MM
XL Specialty - \$15MM aggregate excess \$15MM
Houston Casualty Company - \$15MM aggregate excess \$7.5MM

*MFG Assurance Company Limited is MF Global Holdings Ltd.'s wholly-owned captive insurance company domiciled in Bermuda and regulated by the Bermuda Monetary Authority

THIS DOES NOT REFLECT ACTUAL TERMS AND CONDITIONS. THIS IS NOT INTENDED TO BE RELIED UPON AS AN INSURANCE POLICY OR LEGAL ADVICE.

MFGlobal.

Exhibit B



ALLIED WORLD ASSURANCE COMPANY LTD

27 Richmond Road, Pembroke HM 08, Bermuda
TEL - 441-278-5400 FAX - 441-296-3428

EXCESS LIABILITY INSURANCE POLICY

NOTICE: EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, THE COVERAGE OF THIS POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE THEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.

THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR LEGAL DEFENSE. AMOUNTS INCURRED FOR LEGAL DEFENSE SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.

THE INSURER DOES NOT ASSUME ANY DUTY TO DEFEND.

THE PREMIUM PAYABLE TO THE INSURER DOES NOT INCLUDE ANY AMOUNT WITH RESPECT TO INSURANCE PREMIUM TAXES OR EXCISE TAXES. UNDER THE TERMS OF THE POLICY, IT IS THE OBLIGATION OF THE INSURED TO BE LIABLE FOR AND PAY ANY INSURANCE PREMIUM TAXES OR EXCISE TAXES EITHER ITSELF OR THROUGH ITS BROKER. ALLIED WORLD ASSURANCE COMPANY, LTD WILL BE INDEMNIFIED AND FULLY REIMBURSED BY THE INSURED FOR ANY PREMIUM TAXES (AND COSTS ASSOCIATED WITH COLLECTION, INCLUDING LEGAL COSTS) IN THE EVENT THE INSURED OR ITS BROKER FAILS TO PAY.

DECLARATIONS

POLICY NO.: C007357/005

ITEM 1.	NAMED CORPORATION:	MF Global Holdings Ltd.
	MAILING ADDRESS:	717 Fifth Avenue, 9 th Floor New York, NY USA 10022-8101
ITEM 2.	FOLLOWED POLICY:	Manuscript - Professional Indemnity Insurance
	INSURER:	MFG Assurance Company Limited
	POLICY NO.:	1-18002-00-11
ITEM 3.	POLICY PERIOD:	From: May 31, 2011 To: May 31, 2012 (12:01 A.M. standard time at the address stated in Item 1.)
ITEM 4.	LIMIT OF LIABILITY:	USD 15,000,000 aggregate for coverages combined (including Defense Costs)
	EXCESS OF TOTAL UNDERLYING LIMITS OF:	USD 125,000,000



ALLIED WORLD ASSURANCE COMPANY LTD

27 Richmond Road, Pembroke HM 08, Bermuda
TEL - 441-278-5400 FAX - 441-296-3428

- ITEM 5.** PREMIUM: USD 298,500
- ITEM 6.** A. DISCOVERY PERIOD PREMIUM: 150% of premium set forth in Item 6
B. DISCOVERY PERIOD: 12 Month(s)
- ITEM 7.** NOTICE OF CANCELLATION PERIOD: Per **Followed Policy**
- ITEM 8.** ADDRESS OF INSURER FOR ALL NOTICES UNDER THIS POLICY:

ALLIED WORLD ASSURANCE COMPANY, LTD
ATTN: CLAIMS DEPARTMENT
27 RICHMOND ROAD
PEMBROKE HM 08
BERMUDA
- ITEM 9.** POLICY FORM: EXCESS LIABILITY INSURANCE POLICY (General Excess (DB 03/02))
- ENDORSEMENT(S): Specific Litigation/Event Exclusion
Prior Notice Exclusion
Pending and Prior Litigation Exclusion
- BROKER: Willis (Bermuda) Ltd.
The Vallis Building
58 Par-la-Ville Road
Hamilton, HM 12
Bermuda


Authorized Representative



ALLIED WORLD ASSURANCE COMPANY LTD

27 Richmond Road, Pembroke HM 08, Bermuda

TEL - 441-278-5400 FAX - 441-296-3428

EXCESS LIABILITY INSURANCE POLICY

In consideration of the payment of the premium, and in reliance upon the statements made to the **Insurer** by application forming a part hereof and its attachments and the material incorporated therein, ALLIED WORLD ASSURANCE COMPANY, LTD herein called the "**Insurer**", agrees as follows:

I. INSURING AGREEMENTS

This policy shall provide the **Named Insureds** with Excess Liability Insurance coverage for **Loss** or **Damages** resulting from any claim or claims first made against the Insured(s) and reported to the **Insurer** pursuant to the terms of this policy in accordance with the same warranties, terms, conditions, exclusions and limitations as were contained in the **Followed Policy** on the inception date of this policy subject to the premium, limits of liability, **Policy Period**, warranties, exclusions, limitations and other terms and conditions of this policy including any and all endorsements attached hereto; provided always that this policy shall, in no event and notwithstanding any other provision, provide coverage broader than that provided by the **Followed Policy** unless such broader coverage is specifically agreed to by the **Insurer** and identified as broader coverage in a written endorsement attached hereto.

II. DEFINITIONS

- (a) The term "**Followed Policy**" shall mean the policy identified in Item 2 of the Declarations.
- (b) The term "**Loss**" or "**Damages**" shall have the same meaning in this policy as is attributed to it in the **Followed Policy** except that the term "**Loss**" or "**Damages**" shall in no event include civil or criminal fines or penalties, the multiplied portion of multiplied damages or any amounts for which the **Named Insureds** are not financially liable or which are without legal recourse to the **Named Insureds**, or matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

Loss or **Damages** shall include punitive damages to the same extent punitive damages are part of **Loss** or **Damages** under the **Followed Policy**; provided, however, if the **Followed Policy** coverage for punitive damages is solely contingent on the insurability of such damages under applicable law then this policy shall provide coverage for punitive damages.
- (c) The term "**Policy Period**" shall mean the period of time from the inception date shown in Item 3 of the Declarations to the earlier of the expiration date shown in Item 3 of the Declarations or the effective date of cancellation of this policy.
- (d) The term "**Underlying Policies**" shall mean the Primary and Underlying Excess Policies set forth in Item 5 of the Declarations.
- (e) The term "**Underlying Insurer(s)**" shall mean the insurer(s) of the **Underlying Policies**.
- (f) The term "**Underlying Aggregate Limit**" shall mean an amount equal to the aggregate of all the limits of the **Underlying Policies** combined (excess of their retentions).



All other terms shall have the same meaning in this policy as is attributed to it in the applicable **Followed Policy**.

III. LIMIT OF LIABILITY

The Limit of Liability stated in Item 4 of the Declarations is the aggregate limit of the **Insurer's** liability for all **Loss** or **Damages** arising out of all claims or occurrences reported to the **Insurer** in accordance with the terms and conditions of the **Followed Policy**; the Limit of Liability for the Discovery Period (if applicable) shall be part of, and not in addition to, the Limit of Liability for the **Policy Period**. Further, any claim which is made subsequent to the **Policy Period** or Discovery Period (if applicable) which pursuant to Section V herein and the terms and conditions of the **Followed Policy** is considered made during the **Policy Period** or Discovery Period shall also be subject to the one aggregate Limit of Liability stated in Item 4 of the Declarations.

It is expressly agreed that liability for any covered **Loss** with respect to claims first made and reported during the **Policy Period** shall attach to the **Insurer** only after the **Underlying Insurer(s)** and/or the **Named Insureds** shall have paid or been held liable to pay the full amount of the **Underlying Aggregate Limit**, and the **Named Insureds** shall have paid or been held liable to pay the full amount of the applicable retention amount for such **Policy Period**. In the event and only in the event of the reduction or exhaustion of the **Underlying Aggregate Limit** by reason of the **Underlying Insurer(s)** and/or the **Named Insureds** paying or being held liable to pay **Loss** otherwise covered hereunder, this policy shall: (i) in the event of reduction, pay excess of the reduced **Underlying Aggregate Limit**, and (ii) in the event of exhaustion, continue in force as primary insurance; provided always that in the latter event this policy shall only pay excess of the retention amount, which retention amount shall be applied to any subsequent **Loss** in the same manner as specified in the **Followed Policy**.

This policy shall pay only in the event of reduction or exhaustion of the **Underlying Aggregate Limit** as described above and shall not drop down or otherwise make any payment for any reason including, but not limited to, uncollectability (in whole or in part) of the **Underlying Aggregate Limit**, existence of a sub-limit of liability in any **Underlying Policy**, or any Excess Policy containing terms and conditions different from the **Followed Policy**. The risk of uncollectability of the **Underlying Policies** (in whole or in part) whether because of financial impairment or insolvency of an **Underlying Insurer**, the application of any underlying sub-limit of liability or differing terms and conditions or for any other reason is expressly retained by the **Named Insureds** and is not in any way or under any circumstances insured or assumed by the **Insurer**.

IV. UNDERLYING LIMITS

It is a condition of this policy that the **Underlying Policies** shall be maintained in full effect with solvent insurers during the **Policy Period** except for any reduction or exhaustion of the **Underlying Aggregate Limits** contained therein by reason of **Loss** paid thereunder (as provided for in Clause III above). Failure to comply with the foregoing shall not invalidate this policy, but in the event of such failure, the **Insurer** shall be liable only to the extent that it would have been liable had the **Named Insureds** complied with such condition.

If during the **Policy Period** or any Discovery Period the terms, conditions, exclusions or limitations of the **Followed Policy** are changed in any manner, the **Named Insureds** shall as a condition precedent to their



rights under this policy give to the **Insurer** as soon as practicable written notice of the full particulars thereof. This policy shall become subject to any such changes upon the effective date of the changes in the **Followed Policy**, but only upon the condition that the **Insurer** agrees to follow such changes by written endorsement attached hereto and the **Named Insureds** agree to any additional premium and/or amendment of the provisions of this policy required by the **Insurer** relating to such changes. Further, such new coverage is conditioned upon the **Named Insureds** paying when due any additional premium required by the **Insurer** relating to such changes.

V. NOTICE OF CLAIM

The **Named Insureds** shall, as a condition precedent to the obligations of the **Insurer** under this policy, give written notice at the address indicated in Item 9 of the Declarations and all **Underlying Insurer(s)** of any claim made or circumstances that might give rise to a claim against the **Named Insureds**. Such written notice shall be provided to the **Insurer** in accordance with the terms and conditions of the **Followed Policy**.

If during the **Policy Period** or during the Discovery Period (if applicable) (i) written notice of a claim has been given to the **Insurer** as set forth in this Clause, or (ii) to the extent permitted by the terms and conditions of the **Followed Policy**, written notice of circumstances that might reasonably be expected to give rise to a claim, has been given to the **Insurer** and all **Underlying Insurer(s)**, then any claim which is subsequently made against the **Named Insureds** and reported to the **Insurer** and all **Underlying Insurer(s)** alleging, arising out of, based upon or attributable to the facts alleged in the claim or circumstances of which such notice has been given, or alleging any Wrongful Act which is the same as or related to any Wrongful Act alleged in the claim or circumstances of which such notice has been given, shall be considered made at the time notice of such claim or circumstances has been given to the **Insurer**.

The **Named Insureds** shall, as a condition precedent to the obligations of the **Insurer** under this policy, give written notice to the **Insurer** of the following events as soon as practicable but in no event later than thirty (30) days after the **Named Insured** becomes aware of the event:

- (i) Any **Underlying Policy** being canceled or non-renewed or otherwise ceasing to be in effect or being uncollectible (in part or in whole); or
- (ii) Any insurer of any **Underlying Policy** being subject to a receivership, liquidation, dissolution, rehabilitation or any similar proceeding or being taken over by any regulatory authority; or
- (iii) The **Named Insured** consolidating with or merging with or into, or transferring all or substantially all of its assets to, or acquiring or being acquired by any natural person or entity or group of natural persons and/or entities acting in concert.

VI. CLAIM PARTICIPATION

The **Insurer** shall have the right, in its sole discretion, but not the obligation to effectively associate with the **Named Insureds** in the defense and settlement of any claim that appears to the **Insurer** to be reasonably likely to involve the **Insurer**, including but not limited to effectively associating in the negotiation of a settlement. The **Named Insured** shall defend and contest any such claim. The **Named Insureds** shall give



the **Insurer** full cooperation and such information as it may reasonably require. The failure of the **Insurer** to exercise any right under this paragraph at any time shall not act as a waiver or limit the right of the **Insurer** in any manner to exercise such rights at any other time including the right to effectively associate in the negotiation of a settlement.

The **Insurer** does not under this policy assume any duty to defend. The **Named Insureds** shall not admit or assume any liability, enter into any settlement, stipulate to any judgment or incur any Defense Costs without the prior written consent of the **Insurer**. Only those settlements, stipulated judgments and Defense Costs which have been consented to by the **Insurer** shall be recoverable as **Loss** under the terms of this policy. The **Insurer's** consent shall not be unreasonably withheld, provided that the **Insurer** shall be entitled to effectively associate in the defense and the negotiation of any settlement of any claim in order to reach a decision as to reasonableness.

VII. DISCOVERY CLAUSE

The **Named Insureds** shall be entitled to a Discovery Period (or extended reporting period) pursuant to the terms and conditions of the **Followed Policy**. The Discovery Period (or the extended reporting period) is not available unless the **Named Insured** has elected the Discovery Period (or Extended Reporting Period) in all **Underlying Policies** which have been canceled or non-renewed by their **Underlying Insurer(s)**. The additional premium for the Discovery Period shall be fully earned at the inception of the Discovery Period. The Discovery Period is not cancelable.

VIII. CANCELLATION CLAUSE

This policy may be canceled by the **Named Insured** only by mailing written prior notice to the **Insurer** or by surrender of this policy to the **Insurer** or its authorized agent at the address set forth in Item 10 of the Declarations and within the time period and in the manner set forth in the **Followed Policy**. This policy may also be canceled by or on behalf of the **Insurer** by delivering to the **Named Insured** or by mailing to the **Named Insured**, by registered, certified, or other first class mail, at the **Named Insured's** address set forth in the Declarations, written notice stating when, not less than the period set forth in Item 8 of the Declarations, thereafter the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The **Policy Period** terminates at the date and hour specified in such notice, or at the date and time of surrender.

If this policy shall be canceled by the **Named Insured**, the **Insurer** shall retain the customary short rate proportion of the premium hereon.

If this policy shall be canceled by the **Insurer**, the **Insurer** shall retain the pro rata proportion of the premium hereon.

Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation but such payment shall be made as soon as practicable.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.



IX. ARBITRATION

Any and all disputes arising under or relating to this policy, including its formation and validity, and whether between the **Insurer** and the **Named Insured** or any person or entity deriving rights through or asserting rights on behalf of the **Named Insured**, shall be finally and fully determined in Hamilton, Bermuda under the provisions of The Bermuda International Conciliation and Arbitration Act of 1993 (exclusive of the Conciliation Part of such Act), as may be amended and supplemented, by a Board composed of three arbitrators to be selected for each controversy as follows:

Either party to the dispute, once a claim or demand on its part has been denied or remains unsatisfied for a period of twenty (20) calendar days by the other party, may notify the other party of its desire to arbitrate the matter in dispute and at the time of such notification the party desiring arbitration shall notify the other party of the name of the arbitrator selected by it. The other party who has been so notified shall within ten (10) calendar days thereafter select an arbitrator and notify the party desiring arbitration of the name of such second arbitrator. If the party notified of a desire for arbitration shall fail or refuse to nominate the second arbitrator within ten (10) calendar days following the receipt of such notification, the party who first served notice of a desire to arbitrate will, within an additional period of ten (10) calendar days, apply to the Supreme Court of Bermuda for the appointment of the second arbitrator and in such a case the arbitrator appointed by the Supreme Court of Bermuda shall be deemed to have been nominated by the party who failed to select the second arbitrator. The two arbitrators, chosen as above provided, shall within ten (10) calendar days after the appointment of the second arbitrator choose a third arbitrator. Upon acceptance of the appointment by said third arbitrator, the Arbitration Board for the controversy in question shall be deemed fixed.

The Arbitration Board shall fix, by a notice in writing to the parties involved, a reasonable time and place for the hearing and may in said written notice or at the time of the commencement of said hearing, at the option of said Arbitration Board, prescribe reasonable rules and regulations governing the course and conduct of said hearing.

The Board, shall, within ninety (90) calendar days following the conclusion of the hearing, render decision on the matter or matters in controversy in writing and shall cause a copy thereof to be served on all parties thereto. In case the Board fails to reach a unanimous decision, the decision of the majority of the members of the Board shall be deemed to be the decision of the Board.

Each party shall bear the expense of its own arbitrator. The remaining cost of the arbitration shall be borne equally by the parties to such-arbitration.

All awards made by the Arbitration Board shall be final and no right of appeal shall lie from any award rendered by the Arbitration Board. The parties agree that the Supreme Court of Bermuda: (i) shall not grant

leave to appeal any award based upon a question of law arising out of the award; (ii) shall not grant leave to make an application with respect to an award; and (iii) shall not assume jurisdiction upon any application by a party to determine any issue of law arising In the course of the arbitration proceeding, including but not limited to whether a party has been guilty of fraud.

All awards made by the Arbitration Board may be enforced in the same manner as a judgment or order from the Supreme Court of Bermuda and judgment may be entered pursuant to the terms of the award by leave from the Supreme Court of Bermuda.



No person or organization shall have any right under this policy to join the **Insurer** as a party to any action against the **Named Insureds** to determine the **Named Insureds'** liability, nor shall the **Insurer** be impleaded by the **Named Insureds** or their legal representatives. The **Insurer** and the **Named Insureds** agree that in the event that claims for indemnity or contribution are asserted in any action or proceeding against the **Insurer** by any of the **Named Insureds'** other insurers in a jurisdiction or forum other than that set forth in this clause, the **Named Insureds** will in good faith take all reasonable steps requested by the **Insurer** to assist the **Insurer** in obtaining a dismissal of these claims (other than on the merits.) The **Named Insureds** will, without limitation, undertake to the court or other tribunal to reduce any judgment or award against such other insurers to the extent that the court or tribunal determines that the **Insurer** would have been liable to such insurers for indemnity or contribution pursuant to this policy. The **Named Insureds** shall be entitled to assert claims against the **Insurer** for coverage under this policy including, without limitation, for amounts by which the **Named Insureds** reduced judgment against such other insurers in respect of such claims for indemnity or contribution, in an arbitration between the **Insurer** and the **Named Insureds** pursuant to this clause; provided, however, that the **Insurer** in such arbitration in respect of such reduction of any judgment shall be entitled to raise any defenses under this policy and any other defenses (other than jurisdictional defenses) as it would have been entitled to raise in the action or proceeding with such insurers.

X. CHOICE OF LAW

This policy shall be construed and enforced in accordance with the internal laws of the State of New York (with the exception of the procedural law required by Clause IX, which shall be construed and enforced in accordance with the laws of Bermuda), except insofar as such laws may prohibit payment hereunder in respect of punitive damages; provided, however, that, notwithstanding any legal principles to the contrary, the warranties, terms, conditions, exclusions and limitations of this policy are to be construed in an evenhanded fashion between the **Named Insureds** and the **Insurer**. Without limitation, where the language of this policy is deemed to be ambiguous or otherwise unclear, the issues shall be resolved in the manner most consistent with the warranties, terms, conditions, exclusions and limitations viewed as a whole (without regard to authorship of the language and without any presumption or arbitrary interpretation or construction in favor of either the **Named Insureds** or the **Insurer**.)

XI. HEADINGS

The descriptions in the headings and any subheadings of this policy (including any titles given to any endorsement attached hereto) are inserted solely for convenience and do not constitute any part of the terms or conditions hereof.

IN WITNESS WHEREOF, the **Insurer** has caused this policy to be signed by an Authorized Representative of Professional Lines.

A handwritten signature in blue ink, appearing to be 'R. J. R.', written over a horizontal line.

AUTHORIZED REPRESENTATIVE

ENDORSEMENT NO: 1
This endorsement, effective: May 31, 2011
Policy number: C007357/005
Issued to: MF Global, Ltd
By: Allied World Assurance Company, Ltd.

SPECIFIC EVENT EXCLUSION

It is understood and agreed that this policy is amended by adding the following:

This policy shall not cover any **Loss** or **Damages** in connection with:

- (i) any of the claims, notices, events, investigations or actions referred to below (hereinafter "**Event**");
- (ii) the prosecution, adjudication, settlement, disposition, resolution or defense of any **Event** or any claims arising from any **Event**; or
- (iii) any wrongful act, underlying facts, circumstances, acts or omissions in any way relating to any **Event**.

"**Event**" includes the following:

	Policy Year	Discovery Date	Name
(i)	2001/02	August 2001	Caixa/Borell
(ii)	2002/03	October 2002	Parabola/Tangent
(iii)	2003/04	October 2003	CCPM
(iv)	2003/04	October 2004	Man AHL Diversified
(v)	2004/05	December 2004	Man Glenwood Fund EU
(vi)	2004/05	March 2005	Phoenix
(vii)	2004/05	June 2005	AMF (French Regulator)
(viii)	2004/05	July 2005	Philadelphia Alternative Asset Management and the employment and activities of Thomas Gilmartin whilst employed by the insured.
(ix)	2006/07	April 2007	Gil Neihuas
(x)	2006/07	April 2007	Leaderguard

(xi)	2006/07	April 2007	IETE
(xii)	2007/2008	May 2007	Axiom Power International Inc
(xiii)	2007/2008	January 2008	William E. Amacker
(xiv)	2007/2008	March 2008	Wizzard Asset Management Inc.
(xv)	2007/2008	April 2008	Evan Dooley
(xvi)	2007/2008	April 2008	Joseph Saab
(xvii)	2007/2008	May 2007	Commodity Futures Trading Commission
(xviii)	2007/2008	May 2007	Clifden Futures
(xix)	2007/2008		German Retail Claims
(xx)	2007/2008		CME Group Disciplinary Proceedings

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.



Authorized Representative

ENDORSEMENT NO:	2
This endorsement, effective:	May 31, 2011
Policy number:	C007357/005
Issued to:	MF Global, Ltd
By:	Allied World Assurance Company, Ltd.

PRIOR NOTICE EXCLUSION

It is hereby understood and agreed that the **Insurer** shall not be liable for **Loss** in connection with any claim or claims made against the **Named Insured** alleging, arising out of, based upon or attributable to the facts alleged, or to the same or related Wrongful Acts alleged or contained, in any claim which has been reported, or in any circumstances of which notice has been given, under any policy, whether excess or underlying, of which this policy is a renewal or replacement or which it may succeed in time.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.


Authorized Representative

ENDORSEMENT NO: 3
This endorsement, effective: May 31, 2011
Policy number: C007357/005
Issued to: MF Global, Ltd
By: Allied World Assurance Company, Ltd.

PENDING AND PRIOR LITIGATION EXCLUSION

It is hereby understood and agreed that the **Insurer** shall not be liable for **Loss** or **Damages** in connection with any claim or claims made against the **Insureds**:

- (a) alleging, arising out of, based upon or attributable to any pending or prior litigation as of 19 July 1992, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS REMAIN THE SAME.


Authorized Representative

Exhibit C



Iron-Starr Excess Agency Ltd.
141 Front Street, 7th Floor
Hamilton HM 19, Bermuda
Telephone: 1 441 279 7000

**EXCESS FOLLOW FORM LIABILITY POLICY
DECLARATIONS**

POLICY NO: ISF0000508

- Item 1.** Insured: MF Global Holdings Ltd.
(and others as more fully described in the Followed Policy)
- Principal Address: 717 Fifth Avenue, 9th Floor
New York, NY 10022
USA
- Item 2.** Coverage Provided: Excess Errors & Omissions
- Item 3.** Followed Policy: Insurer: Houston Casualty Company
Policy number: 14-MGU-11-A10657
- Item 4.** Policy Period: From 12:01 A.M. on May 31, 2011
To 12:01 A.M. on May 31, 2012
(Local time at the address shown in Item 1.)
- Item 5.** Premium: USD 86,450
- Item 6.** Limit of Liability: USD 5,000,000 for all covered loss under all coverages per claim
and in the aggregate.
- Item 7.** Underlying Policy Limits: USD 140,000,000
(Underlying policies as bound and/or issued and on file with the
Company, herein referred to as the "Underlying Policies") all
covered loss under all coverages per claim and in the aggregate
- Item 8.** Endorsements at issuance: None



IRON-STARR

**EXCESS FOLLOW FORM LIABILITY POLICY
DECLARATIONS (Cont'd)**

POLICY NO: ISF0000508

Item 9. Name and address for all notices under this policy:

(a) Claims:

Claims@ironstarrexcross.com

Or:

Iron-Starr Excess Agency Ltd.
Attention: Claims Manager
Suite 608, 12 Church Street
Hamilton HM11, Bermuda

(b) All other notices:

Iron-Starr Excess Agency Ltd.
Attention: Underwriting Department
Suite 608, 12 Church Street
Hamilton HM11, Bermuda

Item 10. THE COMPANY:

Iron-Starr Excess Agency Ltd. for and on behalf of
subscribing Insurers as follows;
70% Ironshore Insurance Ltd.
30% Starr Insurance & Reinsurance Limited

ITEM 11. DECLARATION:

The subscribing Insurers' obligations under this Policy are several and not joint and are limited solely to the extent of their individual subscriptions. No subscribing Insurer is responsible for the subscription of any co-subscribing Insurer

THESE DECLARATIONS, THE POLICY FORM AND ANY ENDORSEMENTS ATTACHED HERETO, TOGETHER WITH THE COMPLETED AND SIGNED APPLICATION, INCLUDING INFORMATION FURNISHED IN CONNECTION THEREWITH WHETHER DIRECTLY OR THROUGH PUBLIC FILING FOR THE FOLLOWED POLICY, ANY UNDERLYING POLICIES AND THIS POLICY, CONSTITUTE THE INSURANCE POLICY WHICH THE COMPANY HAS ISSUED IN RELIANCE UPON THE COMPLETENESS AND ACCURACY OF THE APPLICATION(S) AND OTHER INFORMATION PROVIDED TO THE COMPANY BY OR ON BEHALF OF THE INSURED.



Authorized Representative

**IRON-STARR**

Iron-Starr Excess Agency Ltd.
26 Victoria Street
Hamilton HM 12, Bermuda
Telephone: 1 441 279 7000

EXCESS FOLLOW FORM LIABILITY POLICY

A. INSURING AGREEMENT

The Company shall indemnify the Insured for covered loss in accordance with the terms, conditions and limitations of the Followed Policy in effect at inception, as modified by and subject to the terms, conditions and limitations of this Policy in effect at inception.

B. LIMIT OF LIABILITY

The Company's obligations under this Policy attach only after the Underlying Policy Limits have been reduced or exhausted through payments of covered loss by, on behalf of or in the place of the Insurers of the Underlying Policies pursuant to the terms and conditions of the Underlying Policies. This Policy shall continue in force as primary insurance only upon the exhaustion of the Underlying Policy Limits and payment of any applicable retention. This Policy shall recognize erosion of Underlying Policy Limits of an Underlying Policy through payment of covered loss by others pursuant to the terms and conditions of the Underlying Policy. The Company's obligations under this Policy shall not be increased, expanded or otherwise changed, nor shall the Insurer drop down or make payment by reason of the receivership, insolvency, or inability or the refusal to pay of any underlying insurer, or the cancellation of any of the Underlying Policies. Payments made under any State Amendatory endorsement or sub-limit of liability shall be deemed to apply toward exhaustion of the limits of liability of the Underlying Policies, but this Policy shall not follow such amendatory endorsement or sub-limit of liability. At all times, the risk of uncollectibility of any part of the Underlying Policy Limits, for any reason, is expressly retained by the Insured and any insureds, and is neither covered under this Policy nor assumed by the Company.

C. PUNITIVE DAMAGES

This Policy shall cover punitive damages notwithstanding whether or not punitive damages are insurable under the law(s) applicable to the Underlying Policies. The coverage afforded by this paragraph is included within, and does not increase the Limit of Liability. In the event any of the Underlying Policies do not cover punitive damages, the Insured shall be self-insured with respect to such damages.

D. CLAIMS

This Policy shall follow the claims provisions of the Followed Policy with notice hereunder being sent to the Company at either address stated in Item 9 (a) above.

In matters regarding claims, the Company shall act on its own behalf with respect to the handling and settlement of any claim and shall have the right, but not duty, to effectively associate with the Insured regarding the investigation, defense, negotiation of settlement and settlement of any claim that is or reasonably could be covered in whole or in part by this Policy. The Insured shall do nothing that may prejudice the Company's position or potential rights of recovery.



IRON-STARR

Iron-Starr Excess Agency Ltd.
26 Victoria Street
Hamilton HM 12, Bermuda
Telephone: 1 441 279 7000

EXCESS FOLLOW FORM LIABILITY POLICY

E. MODIFICATION AND CANCELLATION

Modification of any term, condition, limitation or exclusion of the Followed Policy or the Underlying Policies not agreed upon prior to the binding date of this Policy shall alter the terms of this Policy only upon the written consent of the Company. Written consent at the sole discretion of the Company by endorsement is required with respect to modifications which: (i) expand the coverage of an Underlying Policy, (ii) change the policyholder name or address, or (iii) modify premium. This Policy shall follow the cancellation terms of the Followed Policy, except that in the event the Company cancels this Policy for non-payment of premium this Policy shall be void ab initio.

F. CHOICE OF LAW

This Policy shall be construed and enforced in accordance with the applicable law as set forth in the Followed Policy. In the event the Followed Policy does not specify a choice of law, this Policy, shall be construed and enforced in accordance with the laws of the State of New York. Notwithstanding the foregoing, at all times Paragraph C above shall always be construed and enforced solely in accordance with the laws of Bermuda. Notwithstanding any law, rule of construction or Underlying Policy language to the contrary, the warranties, terms, conditions, exclusions and limitations of this Policy are to be construed in an evenhanded fashion between the Insurer and an insured.

G. ALTERNATIVE DISPUTE RESOLUTION AND STATE STATUTES

This Policy shall follow the Arbitration or Alternative Dispute Resolution (collectively "ADR") terms of the Followed Policy. In the event the Followed Policy does not provide for ADR, then any dispute arising out of or in connection with this Policy shall be referred to and fully and finally resolved solely by Arbitration held in Hamilton, Bermuda under The Bermuda International Conciliation and Arbitration Act of 1993 (exclusive of the Conciliation Part of such act), as may be amended and supplemented, which Act is deemed incorporated by reference hereto, with the number of arbitrators being set at three and both parties agreeing to bear the costs of their own arbitrator with the remaining costs borne equally by both parties.

Notwithstanding any provision of the Followed Policy or Underlying Policies, this Policy shall not conform to the Statutes of any State of the United States of America, its territories, possessions or Puerto Rico and the Company does not consent to either the service of suit within the United States of America, its territories, possessions or Puerto Rico or the jurisdiction of any federal, territorial or state court of the United States of America, its territories, possessions or Puerto Rico.

IN WITNESS WHEREOF, the Company has caused this Policy to be signed by its duly appointed Authorized Representative.

Authorized Representative

Exhibit D

January 20, 2012

Derek Barbera
WILLIS OF NEW YORK, INC.
200 LIBERTY STREET
NEW YORK, NY 10281-0000

RE: MF GLOBAL HOLDINGS LTD.

Insuring Company: Federal Insurance Company

Dear Derek:

Enclosed is our DFI Excess Professional Liability Policy for the above referenced Insured.

I want to thank you for the opportunity to underwrite this account.

Please let me know if I can be of further assistance.

Sincerely,

A handwritten signature in black ink that reads "Lisa Friscia". The signature is written in a cursive, flowing style.

Lisa Friscia

CHUBB SPECIALTY INSURANCE

mw

DFI Excess Professional Liability

PREMIUM BILL

Insured: MF GLOBAL HOLDINGS LTD.

Date: 01/20/2012

Producer: WILLIS OF NEW YORK, INC.
200 LIBERTY STREET
NEW YORK, NY 10281-0000

Company: Federal Insurance Company

THIS BILLING IS TO BE ATTACHED TO AND FORM A PART OF THE POLICY REFERENCED BELOW.

Product: DFI Excess Professional Liability

Policy Number: 8208-3220

Policy Period: May 31, 2011 to May 31, 2012

NOTE: - PLEASE RETURN THIS BILL WITH REMITTANCE AND NOTE HEREON ANY CHANGES. BILL WILL BE RECEIPTED AND RETURNED TO YOU PROMPTLY UPON REQUEST.

PLEASE REMIT TO PRODUCER INDICATED ABOVE.

Product	Effective Date	Premium
BANKERS PROFESSIONAL LIABILITY - EXCESS	05/31/11	\$80,000.00

* For Kentucky policies, amount displayed includes tax and collection fees.

TOTAL POLICY PREMIUM	\$80,000.00
TOTAL INSTALLMENT PREMIUM DUE	\$80,000.00

WHEN REMITTING PLEASE INDICATE POLICY OR CERTIFICATE NUMBER

DFI Excess Professional Liability

PREMIUM BILL

Insured: MF GLOBAL HOLDINGS LTD.

Date: 01/20/2012

Producer: WILLIS OF NEW YORK, INC.
200 LIBERTY STREET
NEW YORK, NY 10281-0000

Company: Federal Insurance Company

THIS BILLING IS TO BE ATTACHED TO AND FORM A PART OF THE POLICY REFERENCED BELOW.

Product: DFI Excess Professional Liability

Policy Number: 8208-3220

Policy Period: May 31, 2011 to May 31, 2012

NOTE: - PLEASE RETURN THIS BILL WITH REMITTANCE AND NOTE HEREON ANY CHANGES. BILL WILL BE RECEIPTED AND RETURNED TO YOU PROMPTLY UPON REQUEST.

PLEASE REMIT TO PRODUCER INDICATED ABOVE.

Product	Effective Date	Commission Rate	Premium
BANKERS PROFESSIONAL LIABILITY - EXCESS	05/31/11	15.50 %	\$80,000.00

* For Kentucky policies, amount displayed includes tax and collection fees.

TOTAL POLICY PREMIUM	\$80,000.00
TOTAL INSTALLMENT PREMIUM DUE	\$80,000.00

WHEN REMITTING PLEASE INDICATE POLICY OR CERTIFICATE NUMBER

**POLICYHOLDER
DISCLOSURE NOTICE OF
TERRORISM INSURANCE COVERAGE**
(for policies with no terrorism exclusion or sublimit)
Insuring Company: Federal Insurance Company

You are hereby notified that, under the Terrorism Risk Insurance Act (the "Act"), effective December 26, 2007, this policy makes available to you insurance for losses arising out of certain acts of terrorism. Terrorism is defined as any act certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States Mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

You should know that the insurance provided by your policy for losses caused by acts of terrorism is partially reimbursed by the United States under the formula set forth in the Act. Under this formula, the United States pays 85% of covered terrorism losses that exceed the statutorily established deductible to be paid by the insurance company providing the coverage.

However, if aggregate insured losses attributable to terrorist acts certified under the Act exceed \$100 billion in a Program Year (January 1 through December 31), the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

If aggregate insured losses attributable to terrorist acts certified under the Act exceed \$100 billion in a Program Year (January 1 through December 31) and we have met our insurer deductible under the Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

The portion of your policy's annual premium that is attributable to insurance for such acts of terrorism is: \$ **-0-**.

If you have any questions about this notice, please contact your agent or broker.

IMPORTANT NOTICE TO POLICYHOLDERS

Insuring Company: Federal Insurance Company

All of the members of the Chubb Group of Insurance companies doing business in the United States (hereinafter "Chubb") distribute their products through licensed insurance brokers and agents ("producers"). Detailed information regarding the types of compensation paid by Chubb to producers on US insurance transactions is available under the Producer Compensation link located at the bottom of the page at www.chubb.com, or by calling 1-866-588-9478. Additional information may be available from your producer.

Thank you for choosing Chubb.

Schedule of Forms

To be attached to and form part of
Policy No. 8208-3220

Company: Federal Insurance Company

Issued to: MF GLOBAL HOLDINGS LTD.

14-02-14839 (2/09 ed.)

14-02-16802 (3/10 ed.)

14-02-3756 (10/01 ed.)

14-02-4489 (10/07 ed.)

14-02-9228 (2/10 ed.)

EXCESS POLICY

DECLARATIONS

Policy Number 8208-3220

Federal Insurance Company,
a stock insurance company,
incorporated under the laws of
Indiana, herein called the
Company.

Item 1. **Parent Organization:** MF GLOBAL HOLDINGS LTD.

Item 2. **Principal Address:** 717 Fifth Avenue
New York, NY 10022

Item 3 **Limit of Liability:**

Each **Policy Period** \$5,000,000 excess of \$145,000,000

Item 4. **Underlying Insurance:**

(A) **Primary Policy**

<u>Insurer</u>	<u>Policy Number</u>	<u>Limits</u>	<u>Policy Period</u>
Houston Casualty Company	14-MG-11-A10657	\$15,000,000	May 31, 2011 To May 31, 2012

(B) **Other Policies**

<u>Insurer</u>	<u>Policy Number</u>	<u>Limits</u>	<u>Policy Period</u>
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See Endorsement No. 4

Item 5. **Policy Period:** From: 12:01 a.m. on May 31, 2011
To: 12:01 a.m. on May 31, 2012

Item 6. **Endorsements Effective at Inception:** See Schedule of Forms Attached

Item 7. **Termination of Prior Policies:** None

Item 8. **Pending or Prior Date:** July 19, 1992

The Company issuing this policy has caused this policy to be signed by its authorized officers, but it shall not be valid unless also signed by a duly authorized representative of the Company.

FEDERAL INSURANCE COMPANY

W. Andrew Mason

Secretary

Paul I. Krump

President

01/20/2012

Date

[Signature]

Authorized Representative

Excess Policy

In consideration of the payment of the premium and subject to the Declarations, limitations, conditions, provisions and other terms of this policy, the Company agrees as follows:

<i>Insuring Clause</i>	1. The Company shall provide the Insureds with insurance during the Policy Period excess of the Underlying Limit . Coverage hereunder shall attach only after the insurers of the Underlying Insurance shall have paid in legal currency the full amount of the Underlying Limit for such Policy Period . Coverage hereunder shall then apply in conformance with the terms and conditions of the Primary Policy as amended by any more restrictive terms and conditions of any other policy designated in Item 4(B) of the Declarations, except as otherwise provided herein.
<i>Maintenance of Underlying Insurance</i>	2. All Underlying Insurance shall be maintained in full effect during the Policy Period and shall afford the same coverage provided by all Underlying Insurance in effect upon inception of this Policy Period , except for any depletion or exhaustion of the Underlying Limit solely by reason of payment of losses thereunder.
<i>Depletion of Underlying Limit</i>	3. Only in the event of exhaustion of the Underlying Limit by reason of the insurers of the Underlying Insurance , or the Insureds in the event of financial impairment or insolvency of an insurer of the Underlying Insurance , paying in legal currency loss which, except for the amount thereof, would have been covered hereunder, this policy shall continue in force as primary insurance, subject to its terms and conditions and any retention applicable to the Primary Policy , which retention shall be applied to any subsequent loss in the same manner as specified in the Primary Policy . The risk of uncollectability of any Underlying Insurance , whether because of financial impairment or insolvency of an underlying insurer or any other reason, is expressly retained by the Insureds and is not in any way insured or assumed by the Company.
<i>Underlying Sublimits</i>	4. If any Underlying Limit is subject to a Sublimit : a. coverage hereunder shall not apply to any claim which is subject to such Sublimit , however, b. the Underlying Limit shall be recognized hereunder as depleted to the extent of any payment of such claim subject to such Sublimit .
<i>Limit of Liability</i>	5. The Company's maximum liability for loss shall be the amount set forth in Item 3 of the Declarations.
<i>Claim Participation</i>	6. The Company may, at its sole discretion, elect to participate in the investigation, settlement or defense of any claim covered by this policy even if the Underlying Insurance has not been exhausted.

**Pending or Prior
Matters**

7. The Company shall not be liable under this policy for any loss which is based upon, arises from or is in consequence of any demand, suit or other proceeding pending, or order, decree or judgment entered against any **Insured** on or prior to the Pending or Prior Date set forth in Item 8 of the Declarations, or the same or any substantially similar fact, circumstance or situation underlying or alleged therein.

**Subrogation -
Recoveries**

8. In the event of any payment under this policy, the Company shall be subrogated to the extent of such payment to all the **Insureds'** rights of recovery and the **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Company effectively to bring suit in the name of the **Insured**.

Any amounts recovered after payment of loss hereunder shall be apportioned in the inverse order of payment to the extent of actual payment. The expenses of all recovery proceedings shall be apportioned among the recipients of the recovery in the ratio of their respective recoveries.

Notice

9. The **Insureds** shall, as a conditions precedent to exercising their rights under this policy, give to the Company written notice as soon as practicable of the cancellation of any **Underlying Insurance**, any notice given under any **Underlying Insurance** and additional or return premiums charged or paid in connection with any **Underlying Insurance**.

Notice to the Company under this policy shall be given in writing addressed to:

Notice of claim: Home Office Claims Department
Chubb Group of Insurance Companies
15 Mountain View Road
Warren, New Jersey 07059

All other notices: Executive Protection Practice
Chubb Group of Insurance Companies
15 Mountain View Road
Warren, New Jersey 07059

Such notice shall be effective on the date of receipt by the Company at such address.

**Company Authorization
Clause**

10. By acceptance of this policy, the **Parent Organization** named in Item 1 of the Declarations agrees to act on behalf of all the **Insureds** with respect to the giving and receiving of notice of claim or termination, the payment of premiums and the receiving of any return premiums that may become due under this policy, the negotiation, agreement to and acceptance of endorsements, and the giving or receiving of any notice provided for under this policy (except the giving of notice to apply for any extended reporting period), and the **Insureds** agree that the **Parent Organization** shall act on their behalf.

Alteration

11. No change in, modification of, or assignment of interest under this policy shall be effective except when made by written endorsement to this policy which is signed by an authorized representative of the Company.

Excess Policy

Policy Termination

12. This policy shall terminate at the earliest of the following times:
- (a) sixty days after the receipt by the **Parent Organization** of a written notice of termination from the Company;
 - (b) upon the receipt by the Company of written notice of termination from the **Parent Organization**;
 - (c) upon expiration of the **Policy Period**;
 - (d) thirty days after the effective date of any alteration or termination of any **Underlying Insurance**, whether by the **Insureds** or any insurer of the **Underlying Insurer**, unless the Company (i) receives written notice of such alteration or termination from the **Parent Organization**, (ii) receives such information as the Company reasonably requests, and (iii) agrees, pursuant to an endorsement, not to terminate this policy; or
 - (e) at such other time as may be agreed upon by the Company and the **Parent Organization**.

Notice of cancellation or non-renewal of the **Primary Policy** duly given by the primary insurer shall serve as notice of the cancellation or non-renewal of this policy by the Company.

The Company shall refund the unearned premium computed at customary short rates if the policy is terminated by the **Parent Organization**. Under any other circumstances the refund shall be computed pro rata.

Termination of Prior Policies

13. Any policies specified in Item 7 of the Declarations shall terminate, if not already terminated, as of the inception date of this policy.

Policy Definitions

14. When used in this policy:

Insureds means those persons or organizations insured under the **Primary Policy**.

Parent Organization means the organization designated in Item 1 of the Declarations.

Primary Policy means the policy scheduled in Item 4(A) of the Declarations or any policy of the same insurer replacing or renewing such policy.

Policy Period means the period of time specified in Item 5 of the Declarations, subject to prior termination in accordance with Section 12 above. If any extended reporting period is exercised, such extension shall be treated as set forth in the **Primary Policy**.

Sublimit means any **Underlying Insurance** limit of liability which:

- a. applies only to a particular grant of coverage under such **Underlying Insurance**, and
- b. reduces and is part of the otherwise applicable limits of liability of such **Underlying Insurance** set forth in Item 4 of the Declarations.

Policy Definitions

(continued)

Underlying Insurance means all policies scheduled in Item 4 of the Declarations and any policies of the same insurers replacing or renewing them.

Underlying Limit means the amount equal to the aggregate of all limits of liability as set forth in Item 4 of the Declarations for all **Underlying Insurance**, subject to any **Sublimits**, plus the applicable uninsured retention, if any, under the **Primary Policy**.

ENDORSEMENT/RIDER

Effective date of
this endorsement/rider: May 31, 2011

Federal Insurance Company

Endorsement/Rider No. 1

To be attached to and
form a part of Policy No. 8208-3220

Issued to: MF GLOBAL HOLDINGS LTD.

NEW YORK AMENDATORY ENDORSEMENT – LATE NOTICE

In consideration of the premium charged, it is agreed that:

- (1) Subject to the terms and conditions of this insurance, failure to provide notice of a **Claim** pursuant to the reporting and/or notice provisions of this policy shall not invalidate any coverage that would have otherwise been available unless the failure to provide such timely notice has prejudiced the Company; except as provided in paragraph (2) below.
- (2) Failure to provide notice of a **Claim** pursuant to the reporting and/or notice provisions of this policy shall not invalidate any coverage if it is shown that it was not reasonably possible to give such notice within the prescribed time, and that such notice was given as soon as reasonably possible thereafter.
- (3) The burden of proving prejudice for failure to provide timely notice shall be on:
 - (a) the Company if the notice was provided within two (2) years of the time required under this policy; or
 - (b) the **Insured**, injured person, or claimant if the notice was provided more than two (2) years after the time required under this policy.
- (4) Notwithstanding the above paragraph, an irrebuttable presumption of prejudice shall apply if, prior to notice:
 - (a) the **Insured's** liability has been determined by a court of competent jurisdiction or by binding arbitration; or
 - (b) the **Insured** has entered into any settlement or other compromise.
- (5) Except as expressly set forth in this endorsement, nothing herein shall be construed:
 - (a) to amend provisions in the policy stating that claims shall be made during the **Policy Period**, any renewal thereof, or any extended reporting period; or
 - (b) to duplicate coverage under multiple policy periods.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Effective date of
this endorsement/rider: May 31, 2011

Federal Insurance Company

Endorsement/Rider No. 2

To be attached to and
form a part of Policy No. 8208-3220

Issued to: MF GLOBAL HOLDINGS LTD.

EXCESS POLICY AMENDMENTS ENDORSEMENT

In consideration of the premium charged, it is agreed this Policy is amended as follows:

- (1) Section 1, Insuring Clause, is deleted and replaced with the following:

The Company shall provide the **Insureds** with insurance during the **Policy Period** excess of the **Underlying Limit**. Coverage hereunder shall attach only after the **Underlying Insurers** and/or the **Insureds** or any other party shall have paid in legal currency the full amount of the **Underlying Limit** for such **Policy Period**. Coverage hereunder shall then apply in conformance with the terms and conditions of the **Primary Policy**, except as otherwise provided herein.

- (2) Section 2, Maintenance of Underlying Insurance, is amended by adding the following at the end thereof:

This policy shall not be invalidated solely by reason of any failure of the **Insured** to comply with the foregoing, but under no circumstances shall the Company be liable under this policy earlier or to any greater extent than it would have been if the **Insured** had complied with this condition.

- (3) Section 3, Depletion of Underlying Limit, is deleted and replaced with the following:

In the event of exhaustion of the **Underlying Limit** by reason of the **Underlying Insurers** and/or the **Insureds** or any other party, paying in legal currency loss which, except for the amount thereof, would have been covered hereunder, this Policy shall continue in force as primary insurance, subject to its terms and conditions and any retention applicable to the **Primary Policy**, which retention shall be applied to any subsequent loss in the same manner as specified in the **Primary Policy**.

- (4) Section 6, Claim Participation, is deleted and replaced with the following:

The Company may, at its sole discretion, reasonably participate in the investigation, settlement or defense of any claim covered by this policy even if the **Underlying Insurance** has not been exhausted.

- (5) Section 9, Notice, is amended as follows:

- (a) The first sentence is deleted and replaced with the following.

The **Insureds** shall give to the Company written notice as soon as practicable of the cancellation of any **Underlying Insurance**, any notice given under any **Underlying Insurance** and additional or return premiums charged or paid in connection with any **Underlying Insurance**.

- (b) The last sentence is deleted and replaced with the following:

Such notice shall be effective upon the earliest of the date of receipt by the Company at such address or one day following the date such notice is sent.

- (6) The terms of the following provisions of this policy are deleted and replaced with the terms of same or similarly identified provisions in the **Primary Policy**:

Section 7 (Pending or Prior Matters) subject to the Pending or Prior Date set forth in Item 8 of this policy;

Section 8 (Subrogation – Recoveries);

Section 10 (Company Authorization Clause); and

Section 12 (Policy Termination),

provided that it is expressly understood and agreed that this policy is an agreement that is separate and independent of the **Primary Policy**, and the Company retains the separate and independent right to interpret the terms and conditions of this policy, including the extent to which the provisions identified above conform with the terms of the **Primary Policy**.

- (7) Section 11, Alteration, is deleted and replaced with the following:

No change in, modification of, or assignment of interest under this policy shall be effective except when made by written endorsement to this policy which is signed by an authorized representative of the Company, unless such written endorsement requirement is waived in writing by the Company.

- (8) Section 13, Termination of Prior Policies, is deleted.

- (9) The following definition is added to Section 14, Policy Definitions:

“Underlying Insurer” means the insurer(s) of each respective policy of **Underlying Insurance**.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT

Effective date of
this endorsement: May 31, 2011

Company: Federal Insurance Company

Endorsement No. 3

To be attached to and
form a part of Policy No. 8208-3220

Issued to: MF GLOBAL HOLDINGS LTD.

NEW YORK AMENDATORY ENDORSEMENT

In consideration of the premium charged, it is agreed that:

- (1) If judgment against any person or entity entitled to coverage under the policy remains unsatisfied thirty (30) days after the serving of notice of entry of judgment upon such person or entity (or his, her or its attorney) and upon the Company, then, except during a stay or limited stay of execution against such person or entity on such judgment, an action may be maintained against the Company under the policy for the amount of such judgment. Nothing herein is intended, however, nor shall it be construed, to obligate the Company to make any payment it would not otherwise be obligated to make under the terms, conditions, limitations and endorsements of the policy, or to pay any Loss in excess of the then-available Limit of Liability under the policy.
- (2) Notice of any claim or of any circumstances which may give rise to a claim, whether by or on behalf of any person or entity entitled to coverage under this policy or by or on behalf of any claimant against any such person or entity, will be deemed written notice to the Company if given to any licensed agent of the Company in the State of New York, with particulars sufficient to identify the person or entity entitled to coverage.
- (3) Failure by any person or entity entitled to coverage under the policy to give any notice required to be given within any prescribed time will not invalidate any coverage that would otherwise have been available if it is shown that (a) it was not reasonably possible to give such notice within the prescribed time, and (b) notice was given as soon as reasonably possible.
- (4) Section 12. Policy Termination is deleted and replaced with the following:
"Policy Termination
12. This policy shall terminate in accordance with the following provisions:
 - (a) The Parent Organization may cancel this policy at any time by written notice stating when thereafter such cancellation is to be effective. Except as set forth in 12.(g) below, the Company may cancel this policy only for non-payment of premium, and only by delivering or mailing to the Parent Organization, with a copy to the agent or broker of record, if any, written notice stating when, not less than fifteen (15) days thereafter, such cancellation will become effective and stating the reason for such cancellation. Proof of mailing of such notice will be

sufficient proof that the notice was given and this policy will terminate at the date and hour specified in such notice.

- (b) The Company will refund the unearned premium computed at the customary short rate if this policy is cancelled by the Parent Organization.
- (c) The Company may
 - (i) non-renew this policy, or
 - (ii) condition its renewal upon a change in limits, change in the type of coverage, reduction of coverage, increased deductibles or retentions or addition of exclusions, or upon increased premiums in excess of ten percent (10%) of the expiring rate (exclusive of premiums commensurate with insured value added subsequent to issuance of this policy or at the request of the Parent Organization or as a result of experience rating or retrospective rating);
 - (iii) condition its renewal upon requirements relating to the Underlying Insurance, in which event the conditional renewal notice shall be treated as an effective notice of nonrenewal if such requirements are not satisfied as of the later of the Expiration Date in ITEM 5 of the Declarations or sixty days after the mailing or delivery of such notice;"

by mailing or delivering to the Parent Organization, at least sixty (60) days but not more than one hundred twenty (120) days before the end of the Policy Period as set forth in Item 5 of the Declarations, written notice containing the specific reason or reasons for non-renewal or conditional renewal, and setting forth the amount of any premium increase and the nature of any other proposed changes. Any notice of non-renewal will advise the Parent Organization of any rights to coverage and the duration thereof. Copies of notices required under this paragraph will also be mailed or delivered to the authorized insurance agent or broker of record, if any. This requirement will not apply when the Parent Organization or an agent or broker authorized by such entity has mailed or delivered written notice that this policy has been replaced or is no longer desired. If the Company provides notice of non-renewal and subsequently extends the Policy Period for ninety (90) days or less, no additional notice of non-renewal will be required.

- (d) If before the end of the Policy Period as set forth in Item 5 of the Declarations the Company provides an incomplete or late conditional renewal notice, coverage hereunder will remain in effect on the same terms and conditions and at the lower of the current rates or the rates for the prior period until sixty (60) days after proper notice is mailed, unless the Parent Organization elects to cancel sooner; provided, however, that if the Parent Organization elects to accept the terms, conditions and rates of the conditional renewal notice and renews this policy on that basis, such terms, conditions and rates will govern upon expiration of such sixty (60) day period.
- (e) If before the end of the Policy Period as set forth in Item 5 of the Declarations the Company fails to provide timely or substantially complete notice of non-renewal or conditional renewal, coverage will remain in effect on the same terms and conditions as this policy for another Policy Period at the lower of the proposed or existing Policy Period premium rates.
- (f) The Limit of Liability set forth in Item 3 of the Declarations will not be increased by any non-renewal or conditional renewal notification requirements except that it will be increased in proportion to the extension of the policy.
- (g) Notwithstanding anything to the contrary in this policy, this policy may be cancelled by the Company for acts or omissions by the Parent Organization or its representative constituting fraud or material misrepresentation in obtaining the policy or in presenting a claim under the

policy. Such cancellation will be with respect solely to the coverage afforded under this policy for the Underlying Insurance under which the fraud or material misrepresentation occurred. Written notice stating when, not less than fifteen (15) days thereafter, such cancellation shall be effective, will be mailed or delivered to the Parent Organization at the last address known to the Company and its authorized agent or broker, if any. Such notice shall state the specific reason(s) for the cancellation. Proof of mailing is sufficient proof that the proper notice has been given."

- (5) The bankruptcy or insolvency of the Insureds, or the Insureds estate(s), shall not relieve the Company of its obligations nor deprive the Company of its rights under this policy.
- (6) It is hereby understood and agreed that, notwithstanding anything in the policy to the contrary, with respect to such insurance as is afforded by the policy, the terms of the policy, as respects coverage for operations in the State of New York, shall conform to the coverage requirements of the applicable insurance laws of the State of New York, or the applicable regulations of the New York Insurance Department; provided, however, that the Company's Limit of Liability, as set forth in Item 3 of the Declarations, shall be excess of the limits of liability of any Underlying Insurance, or self-insurance, as stated in Item 3 of the Declarations, or in any endorsement attached hereto.
- (7) The policy will be deemed to have been amended to the extent necessary to effect the purposes of this Amendatory Endorsement.

The regulatory requirements of this Amendatory Endorsement shall supersede and take precedence over any provisions of the policy or any endorsement to the policy, whenever added, that are inconsistent with or contrary to the provisions of this Amendatory Endorsement, unless such policy or endorsement provisions comply with the applicable insurance laws of the State of New York.

All other terms, conditions and limitations of this policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Effective date of
this endorsement/rider: May 31, 2011

Federal Insurance Company

Endorsement/Rider No. 4

To be attached to and
form a part of Policy No. 8208-3220

Issued to: MF GLOBAL HOLDINGS LTD.

AMEND ITEM 4(B) OF THE DECLARATIONS ENDORSEMENT

In consideration of the premium charged, it is agreed that Item 4(B), Other Policies, of the Declarations is amended to include the following policies:

(B) Other Policies

XL Specialty Insurance Company	ELU121505-11	\$15,000,000 excess of \$15,000,000	5/31/2011 - 5/31/2012
Catlin Insurance Company	ARP-100904-0511	\$10,000,000 excess of \$30,000,000	5/31/2011 - 5/31/2012
Continental Casualty Company	287126568	\$5,000,000 part of \$10,000,000 excess of \$40,000,000	5/31/2011 - 5/31/2012
Everest Indemnity Insurance Company	FLSEE0025-111	\$5,000,000 part of \$10,000,000 excess of \$40,000,000	5/31/2011 - 5/31/2012
Axis Insurance Company	MNN732341/01/2011	\$10,000,000 excess of \$50,000,000	5/31/2011 - 5/31/2012
ACE American Insurance Company	RBN G2365586A 005	\$10,000,000 excess of \$60,000,000	5/31/2011 - 5/31/2012
Illinois National Insurance Company	01-880-25-11	\$10,000,000 excess of \$70,000,000	5/31/2011 - 5/31/2012
Ironshore Indemnity, Inc.	001048900	\$5,000,000 excess of \$80,000,000	5/31/2011 - 5/31/2012
New Hampshire Insurance Company	15927116	\$15,000,000 p/o \$25,000,000 excess of \$85,000,000	5/31/2011 - 5/31/2012

ACE American Insurance Company	RBN G23822696 005	\$10,000,000 p/o \$25,000,000 excess of \$85,000,000	5/31/2011 - 5/31/2012
Axis Specialty Limited Bermuda	1132710111QA	\$10,000,000 excess of \$110,000,000	5/31/2011 - 5/31/2012
Federal Insurance Company	82083277	\$5,000,000 excess of \$120,000,000	5/31/2011 - 5/31/2012
Allied World Assurance Company, Ltd.	C007357/005	\$15,000,000 excess of \$125,000,000	5/31/2011 - 5/31/2012
IronShore	ISF0000508	\$15,000,000 excess of \$140,000,000	5/31/2011 - 5/31/2012

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

ENDORSEMENT/RIDER

Effective date of
this endorsement/rider: May 31, 2011

Federal Insurance Company

Endorsement/Rider No. 5

To be attached to and
form a part of Policy No. 8208-3220

Issued to: MF GLOBAL HOLDINGS LTD.

COMPLIANCE WITH APPLICABLE TRADE SANCTION LAWS

It is agreed that this insurance does not apply to the extent that trade or economic sanctions or other similar laws or regulations prohibit the coverage provided by this insurance.

The title and any headings in this endorsement/rider are solely for convenience and form no part of the terms and conditions of coverage.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Authorized Representative

Exhibit E

MFG ASSURANCE COMPANY LIMITED

Type of Coverage: **PROFESSIONAL LIABILITY INSURANCE**

Policy of Insurance No: **1-18002-00-11**

WHEREAS THE Insured named in the Policy has applied to MFG Assurance Company Limited, (hereafter referred to as "The Insurer") for the insurance herein contained and has paid or agreed to pay the premium in consideration for such insurance.

THE INSURER HEREBY AGREES to indemnify the Insured or otherwise to pay the benefits and or compensation stated herein in respect of the happening during the Period of Insurance of any of the contingencies or events specified as being covered under this Insurance.

PROVIDED that this insurance shall be subject to the terms, conditions and exceptions contained in or endorsed on or otherwise expressed in the policy and that the liability of the Company shall not exceed during any one period of insurance the Sum Insured or Limit of Liability as more specifically stated in the Policy.

IN WITNESS WHEREOF, this Policy has been made, entered into and executed by an authorized representative of the Insurer in Hamilton, Bermuda this 6th day of October, 2011.

By: _____



Title: _____

Director

MF GLOBAL HOLDINGS LTD.

2011/2012

PROFESSIONAL LIABILITY INSURANCE

POLICY NO: 1-18002-00-11

MF Global Holdings Ltd. – Professional Liability 1-18002-00-11
31 May 2011

PROFESSIONAL LIABILITY INSURANCE

SCHEDULE

Policy Number	1-18002-00-11		
Item 1.	Policyholder	MF Global Holdings Ltd.	
	Address	717 Fifth Avenue, 9 th Floor New York, NY 10022	
Item 2.	Policy Period	From: 12.01 a.m. on 31st May, 2011 To: 12.01 a.m. on 31st May, 2012 Both days Local Standard Time at the Address stated in Item 1 above.	
Item 3.	Limit of Liability	Total aggregate (excluding any amount borne by the <i>insured</i> as retention) for all <i>claims</i> and all <i>loss</i> under all insurance covers combined: USD 15,000,000.	
Item 4a	Underlying	USD \$7,475,000 each single <i>claim</i>	
4b.	Retention	USD 25,000 each single <i>claim</i>	
Item 5.	Premium	Premium payable:	USD \$786,078

SIGNED FOR AND ON BEHALF OF THE INSURER



MFG Assurance Company Limited

DATE: 6 OCTOBER 2011

PROFESSIONAL LIABILITY INSURANCE

In consideration of the payment of the premium and in reliance upon the statements made to the *insurer* in the proposal form, its attachments and all other information submitted to the *insurer*, all of which are to be the basis of and incorporated into this contract, the *insurer* agrees as follows:

1. Insurance Cover

Professional Liability

The *insurer* shall pay on behalf of the *insured* for all *loss* arising out of a *wrongful act* which gives rise to a *claim* first made against an *insured* by a third party during the *policy period* (or discovery period, if applicable) and reported in writing to the *insurer* pursuant to the terms of this policy.

2. Definitions

-
- 2.1 **Aggravated damages** means any award of damages made in any jurisdiction which is intended to provide compensation to the person receiving the award, whether such compensation relates to economic or non-economic losses suffered by such person.
- 2.2 **Approved person** means any natural person employed by an *insured entity* or a *subsidiary* to whom the Financial Services Authority has given its approval to perform one or more of controlled functions 21-27 for that *insured entity* or *subsidiary* pursuant to Section 59 of the Financial Services and Markets Act 2000.
- 2.3 **Associate effectively** means: at the expense of the *insurer*:
- (a) to be notified promptly of all significant developments;
 - (b) to be informed of the strategy being adopted;
 - (c) to be consulted about material decisions before they are taken; and
 - (d) to have views taken into account if the sum claimed is likely to exceed \$3,750,000.
- 2.4 **Broker-Dealer** means an individual or firm acting as an agent for buyers and sellers and charging a commission but who, at the same time, may trade for his or her own account.
- 2.5 **Circumstance** means any circumstance brought to the attention of the *policyholder's* Insurance Risk Manager, General Counsel or Chief Financial Officer, or designated alternate in which a third party:
- (i) alleges that they have suffered a loss; or

- (ii) may, in the reasonable opinion of the *policyholder's* Insurance Risk Manager, General Counsel or Chief Financial Officer, or his designated alternate, suffer a loss,

arising out of any *wrongful act* and which, in the reasonable opinion of the *policyholder's* Insurance Risk Manager, General Counsel or Chief Financial Officer, or his designated alternate, having regard to the facts and information then available to him, may give rise to a *claim* being made against the *insured*.

2.6 ***Claim*** means:

- (i) any suit or proceeding, including any civil proceeding, third party proceeding, counter claim or arbitration proceeding, or a regulatory proceeding brought by any person or entity against an *insured* for monetary damages or other relief, including non-pecuniary relief for a specified *wrongful act*;
- (ii) any written demand from any person or entity seeking monetary damages or other relief, including non-pecuniary relief, from an *insured* for the results of any specified *wrongful act*;
- (iii) any official investigation, examination, inquiry or other similar proceeding at which an *individual insured* of the *insured entity's* attendance is required provided such official investigation, examination, inquiry or other similar proceeding is directly related to an alleged *wrongful act* of such *individual insured* or the *insured entity* in their capacity as such:
 - (1) once such *individual insured* is identified in writing by such investigating authority as a person against whom a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by: (a) service of a complaint or similar pleading; (b) return of an indictment, information or similar document (in the case of a criminal proceeding); or (c) receipt or filing of a notice of charges may be commenced; or
 - (2) in the case of an investigation by the SEC or a similar state government authority, after the service of a subpoena upon such *individual insured*.

2.7 ***Claimant's costs*** means any costs and expenses (including but not limited to, legal costs, accountants' costs and loss adjusters' costs) incurred by any claimant who brings a *claim* against an *insured* and which such *insured* is required or, with the written consent of the *insurer* (such consent not to be withheld unreasonably), agrees to pay to such claimant in connection with such *claim*.

2.8 ***Co-defendant's costs*** means any costs and expenses (including, but not limited to, legal costs, accountants' costs and loss adjusters' costs) incurred by any party who is named as a co-defendant with an *insured* in relation to a *claim* and which such *insured* is required or, with the written consent of the *insurer* (such consent not to be withheld unreasonably), agrees to pay to such co-defendant in connection with such *claim*.

2.9 **Compensation** means any commissions, payments, fees, compensation or any other type of remuneration. *Compensation* also means kickbacks, bribes or any other similar type of payments.

2.10 **Defense costs** means reasonable fees, costs and expenses (incurred with the written consent of the *insurer*, such consent not to be withheld unreasonably, including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without obligation to apply for or furnish any bond) resulting solely from the investigation, adjustment, defense, discharge, dismissal, settlement and appeal of any *circumstance* or *claim*.

Defense costs shall also include external legal costs incurred in investigating and advising on a situation prior to such situation being notified as a *circumstance* to the *insurer* pursuant to General Provision 5.7 below. This is on the proviso that such situation is subsequently notified to the *insurer* as a *claim* or a *circumstance*, and is otherwise covered hereunder. Such costs are subject to a sub-limit of USD 1,000,000 in the aggregate and these costs shall count towards the erosion of the *retention*.

Defense costs shall also include the reasonable fees, costs and expenses of an accredited expert approved by the *insurer* (such approval not to be unreasonably withheld or delayed) on behalf of an *insured* in connection with the defense of a covered *claim*.

2.11 **Director** or **officer** means any natural person who was, now is, or shall be a director or officer of the *insured entity*. The terms *director* and *officer* shall also mean any equivalent position under the laws of any jurisdiction.

2.12 **Discovered** or **discovery** means when the policyholder's Chief Executive Officer, Chief Financial Officer, General Counsel or Insurance Risk Manager first become aware of or have any knowledge of any act, omission or event which could reasonably be foreseen to give rise to a *loss* covered by this policy, even though the exact amount or details of such *loss*, act, omission or event are not known at the time of *discovery*.

2.13 **Discovery period** means the period of time specified in Extension 4.5, immediately following the termination of this policy during which written notice may be given to the *insurer* of any *claim* first made against the *insured* during such period of time for any *loss* arising out of a *wrongful act* occurring prior to the end of the *policy period* and otherwise covered by this policy.

2.14 **Individual Insured** means any past, present or future natural person employed by the *insured entity* in the ordinary course of the *services* of the *insured entity* and whom the *insured entity* compensates by way of salary or wages and has the right to govern or direct the performance of that person's duties. *Individual insured* shall include:

- (i) any past, present or future natural person under a contract of employment (be it full time, part-time or temporary, or be it written or implied) with the *insured entity*;
- (ii) any past, present or future natural person working under the direct control and supervision of the *insured entity*;

- (iii) any past, present or future *director* or *officer* when performing acts coming within the scope of the usual duties of an *employee* of the *insured entity* or while acting as a member of a committee duly elected or appointed by resolution of the Board of Directors of the *insured entity* to perform specific, as distinguished from general, directorial acts on behalf of the *insured entity*;
 - (iv) Any past, present or future *approved person*, partner, trustee, management committee member of a joint venture or member of the management board of a limited liability company of the *insured entity*.
 - (v) any past, present or future natural person compensated by the *insured* by wages, salaries, commissions or any other form of payments in respect of consultancy services;
 - (vi) *associated persons* meaning any past, present or future natural person licensed with the National Futures Association (NFA) who are registered with the NFA as associated with the *insured entity* and/or who solicits or accepts orders, accounts, or participation in a commodity pool, or supervises any natural person so engaged, on behalf of an *insured entity*. Also includes any natural person occupying a similar role in any jurisdiction, other than the United States or any of its territories or possessions;
 - (vii) *registered representatives* meaning any past, present or future natural person licensed with the National Association of Security Dealers (NASD) who are registered with the NASD as associated with the *insured entity* and/or who solicits or accepts orders, accounts, or participation in investment funds, or supervises any natural person so engaged, on behalf of an *insured entity*. Also includes any natural person occupying a similar role in any jurisdiction, other than the United States or any of its territories or possessions.
- 2.15 ***Insured*** means the *insured entity* and the *individual insured(s)*.
- 2.16 ***Insured entity*** means the *policyholder* and its *subsidiaries* and in the event a bankruptcy proceeding shall be instituted by or against the *Insured entity*, the resulting debtor in possession (or equivalent status outside the United States).
- 2.17 ***Insurer*** means:
- MFG Assurance Company Limited
- 2.18 ***Limit of liability*** means the amount specified in Item 3 of the Schedule.
- 2.19 ***Loss*** means:
- (i) *defense costs*; and/or
 - (ii) damages, *aggravated damages* as permitted by law, judgments (including pre/post judgment interest), restitution orders of a compensatory nature, *claimant's costs*, *co-defendant's costs*, legal costs and expenses awarded against any *insured*; and/or

- (iii) settlements negotiated with the *insurer's* consent (such consent not to be withheld unreasonably); and/or
- (iv) awards of punitive, exemplary and multiple damages (where insurable by law). Enforceability of this paragraph shall be governed by such applicable law which most favors coverage for punitive, exemplary and multiple damages; and/or
- (v) awards of any referee, arbitrator, the Financial Services Ombudsman or any other ombudsman appointed by the Secretary of State for Trade and Industry or similar *regulator* or by any self-regulatory organization or by any recognized professional body by whose rules the *insured* is bound,

in respect of any *claim* covered under this policy.

Loss shall not include:

- (a) taxes, unless such taxes form part of an award of damages to a third party;
- (b) wages, salaries or other remuneration of any *insured*;
- (c) the cost of complying with any settlement for or award of non-monetary relief; or
- (d) principal, interest or other monies accrued or due (either now or in the future) but not yet paid to the *insured entity* as a result of any loan, lease or extension of credit.

2.20 ***Plan*** means any pension, profit sharing or employee/executive benefits program, employee benefit, welfare benefit, share saver or share option plan or charitable fund or foundation established and maintained by the *insured entity* for the benefit of the past, present and/or future *employees* of the *insured entity* or their respective beneficiaries.

2.21 ***Policyholder*** means the organization specified in Item 1 of the Schedule.

2.22 ***Policy period*** means the period of time from the inception date to the earlier of:

- (i) the expiry date specified in Item 2 of the Schedule; or
- (ii) the effective date of cancellation of this policy.

2.23 ***Pollutants*** means but is not limited to, any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including asbestos, smoke, vapor, soot, fibers, mould, spores, fungus, germs, fumes, acids, alkalis, lead, products containing lead, nuclear or radioactive material of any sort, chemicals and waste. Waste includes, but is not limited to, material to be recycled, reconditioned or reclaimed.

2.24 ***Regulator*** means any federal or state government, governmental body, governmental or administrative agency, self-regulatory body or any other regulator.

- 2.25 **Retention** means the amount specified in Item 4b of the Schedule.
- 2.26 **Security** means all negotiable and non-negotiable instruments, including any note, stock, bond, evidence of indebtedness, share (or other equity) or debt security representing either money or property, but does not include money.
- 2.27 **Services** means financial or professional services or other activities performed by the *insured*, or by any other person for whose act, error or omission the *insured* is legally responsible performed for customers or clients (or a prospective customer or client) of the *insured*, and shall include, but shall not be limited to, all administrative, back office or other operations (including, but not limited to, technology functions) of the *insured entity* which support the provision of those services or activities.
- 2.28 **Single claim** means all *claims* arising out of, based upon or attributable to one originating cause or related or continuous originating causes
- 2.29 **Subsidiary** means any company in which the *policyholder* either directly, or indirectly through one or more of its *subsidiaries*:
- (i) controls the composition of the board of directors;
 - (ii) controls more than half of the voting power; or
 - (iii) holds more than half of the issued share capital.

Cover under this Policy is automatically afforded to any *subsidiary* which the *policyholder* creates, either directly or indirectly through one or more of its *subsidiaries*, after the inception date of this policy.

Cover as is afforded to any *subsidiary* under this policy shall only apply for *wrongful act(s)* or other covered acts, committed while such entity is or was a *subsidiary* of the *policyholder*, unless otherwise agreed by the *insurer*.

- 2.30 **Trade secret** means information, including a formula, compilation, pattern, program, device, method, process or technique that derives independent economic value, actual or potential, from not being generally known and not readily ascertainable through proper means by another person who can obtain economic advantage from its disclosure or use.
- 2.31 **Transaction** means any one of the following events:
- (i) an *insured entity* and/or any entity which controls outstanding shares representing fifty (50) per cent or more of the voting power for the election of *directors* of an *insured entity*, consolidates with or merges into or sells all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert;
 - (ii) any person or entity, whether individually or together with any other person and/or group of persons, and/or entities acting in concert, acquires an amount of the outstanding shares representing more than fifty (50) per cent of the

voting power for the election of *directors* of an *insured entity*, or acquires the voting rights for such an amount of the shares;

- (iii) an *insured entity* becomes a *subsidiary* of another entity or becomes controlled by another entity by virtue of any law.

2.32 **Wrongful act** means any actual or alleged act, error or omission by the *insured*, or by any other person for whose act, error or omission the *insured* is legally responsible, arising out of the provision of, or failure to provide the *services*. For the avoidance of doubt, the term “act, error or omission” as used in the foregoing, shall include, but not be limited to any:

- (i) breach of duty, breach of trust (including, but not limited to, breach of constructive trust) breach of fiduciary duty, neglect, error, misstatement, misleading statement, misrepresentation, libel, slander, omission or breach of warranty of authority; or
- (ii) breach of any statute enacted anywhere in the world (including any statutory provisions and/or any rules or *regulations* made by any regulatory body or authority thereunder, and including any award of any referee, arbitrator, the Financial Services Ombudsman or any other ombudsman appointed by the Secretary of State for Trade and Industry or similar *regulator* or by any self-regulatory organization or by any recognized professional body by whose rules the *insured* is bound),
- (iii) other breach of a duty to a third party which is actionable at law in tort, or actionable in delict or quasi-delict in respect of Scotland.

3. Exclusions

The *insurer* shall not be liable to make any payment for *loss* in respect of any *claim* under the Insurance Cover or to make any payment under any Extension of this policy:

3.1 Contractual Liability

arising out of, based upon or attributable to any liability to a third party assumed or accepted by the *insured* under any contract or agreement except to the extent such liability would have attached to the *insured* in the absence of such contract or agreement and provided that this exclusion shall not apply to the extent that a claim alleges the *insured* has not exercised reasonable professional care;

3.2 Fines, Penalties,

arising out of, based upon, attributable to or for:

- (i) civil or criminal fines or penalties imposed by law; unless such award constitutes a compensatory award in a civil law jurisdiction
- (ii) taxes;
- (iii) any amount for which the *insureds* are not financially liable or which are without legal recourse to the *insureds*;
- (iv) matters uninsurable under the law pursuant to which this policy is construed.

3.3 Intellectual Property

arising out of directly or indirectly, based upon, attributable to or in any way connected with any actual or alleged:

- (i) plagiarism; or
- (ii) accessing of, misappropriation, infringement or violation of any:
 - (a) right to privacy; or
 - (b) intellectual property rights including but not limited to, copyright, patent, trademark, trade name, *trade secret*, or computer programs,;

3.3 Prior Notice of Claim

arising out of, based upon or attributable to or in any way connected with any *claim* or *circumstance* which were notified under any professional liability policy of which this policy is a renewal or replacement or which it may succeed in time;

3.4 Technology Failure

arising out of, based upon, or attributable to

- (i) any mechanical, electronic or software failure, faulty construction, error in design, latent defect, wear or tear, gradual deterioration, electrical disturbance, electrical data processing media failure or breakdown or any malfunction or error in programming or errors or omissions in processing; or
- (ii) breakdown or malfunction of any machine or system of machines, including any electrical power interruption, surge, brown out or black out, or failure of telephone lines, data transmission lines, satellites or other infrastructure comprising or supporting the internet;

This Exclusion 3.4 shall not apply to any *claim* resulting solely from an error committed by an *employee* in using and maintaining the system of the *insured* and which has caused a third party to sustain a *loss*;

3.5 Physical Injury/Property Damage

For:

- (i) physical injury, sickness, disease, pain or death and, only if arising out of the foregoing, mental anguish, mental injury, shock, humiliation, or emotional distress at any time; or
- (ii) loss of or damage to or destruction of any tangible property from any cause, including the loss of use thereof.

3.6 Diminution in Value

arising out of, based upon or attributable to, any guarantee or warranty provided by or on behalf of the *insured* as to the performance of any investments including *securities*, money, currencies, options, future transactions, property, or any other item of value unless such diminution or loss in value (or failure to appreciate) is caused solely or in part by a *wrongful act* of an *individual insured* in the execution or implementation of *services*;

3.7 Fees, Commissions, or other Compensation

alleging, arising out of, based upon, or attributable to a dispute concerning the return of fees, commissions, or other compensation for any *services* rendered or required to be rendered by the *insured* but this Exclusion shall apply only to that portion of any settlement or award in an amount equal to such fees, commissions, or other compensation;

3.8 Insured versus Insured

arising out of, based upon or attributable to any *claim* brought by or on behalf of:

- (i) an *insured*, or successors or assigns of any *insured*; or
- (ii) any entity that is operated or managed or controlled by any *insured*; or
- (iii) the *policyholder's* parent company (or any parent or any subsidiary thereof).

This exclusion shall not apply to any *claim*:

- (a) brought by an *individual insured* as long as such *claim* is brought solely in such claimant's capacity as a customer or client of the *insured entity* and is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any other *insured*;
- (b) brought by an *insured* in respect of an indemnity for a claim by a customer or a client of the *policyholder*;
- (c) any *claim* brought by an *insured* in the form of a cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from a *claim* that is covered by this policy;

3.9 Insolvency

For the inability of any financial organization, or *broker-dealer* (who is not an *insured*) in securities or commodities (or selection of such) to make any payment; provided that this exclusion shall not extend to such financial organization in its capacity as a customer or client of the *insured's services*.

3.10 Pollution

alleging, arising out of, based upon or attributable to, or in any way involving directly or indirectly:

- (i) the actual, alleged or threatened discharge, release, escape or disposal of *pollutants*; or
- (ii) any direction or request to test for, monitor, clean up, remove, treat, detoxify, neutralize or contain any *pollutant* or contaminants with which the *insured* is required to comply or for which the *insured* is responsible or any voluntary decision to do so;

3.11 Trustee Liability

For the responsibilities, obligations or duties in respect of any *plan*, including but not limited to any actual or alleged violation of responsibilities, obligations, or duties imposed upon fiduciaries by the Pensions Act 1995 (UK) or the Employee Retirement Income Security Act of 1974 (USA) and any amendments thereto or any similar provision of the law or any amendment thereto or under any related common or statutory or similar provision, of any state, territory, jurisdiction or political subdivision.

3.12 Wrongdoing

Arising out of, based upon, or attributable to:

- (i) the gaining of any profit or advantage to which the *insured* is not legally entitled; or
- (ii) an *insured's* actual or attempted deliberate commission, aiding, abetting, counseling, procuring, inciting, participation in or conniving at any criminal, dishonest, fraudulent or malicious act; or
- (iii) any willful violation of any law or regulation binding on an *insured*,

provided that this exclusion shall only apply to the *insured* against whom it is expressly stated or held by a final adjudication in the underlying *claim* that the subject conduct did in fact occur, provided that the court of adjudication is compelled to find whether the *insured's* act, error or omission was illegal, deliberate, criminal, dishonest, fraudulent malicious or willful ;

3.13 Business Risk

arising out of, based upon or attributable to:

- (i) the internal administration or operation of the business of the *insured entity* other than in connection with the provision by the *insured* of *services*;
- (ii) any liability under a contract of insurance or reinsurance to pay benefits or indemnity due to an *insured entity's* capacity as an insurer or reinsurer of such contract;

- (iii) any costs, payments or expenses or damage made or incurred by an *insured entity* prior to a matter becoming a *claim* including all costs, payments, expenses or damage associated with such matters, other than *defense costs* and fees, costs, expenses, loss and damage which are covered by Extension 4.4;
- (iv) (a) merger and acquisition activity; or
(b) purchase or sales transactions in the *securities* of the *insured entity*,
by the *insured entity* on its own behalf.

4. Extension of Cover

Subject to all provisions, terms, exclusions and conditions of this policy, cover is extended as detailed below. If one or more of the extensions under this policy is deleted or replaced or not required by the *policyholder*, there shall be no reduction in the premium payable as specified under Item 5 of the Schedule. The total of all payments made under these extensions shall be part of and not in addition to the *limit of liability*. The extensions are also subject to the *retention*.

4.1 New Subsidiaries

- (i) Cover under this policy is extended to include any *subsidiary* which the *policyholder* acquires, either directly or indirectly through one or more of its *subsidiaries*, after the inception date of this policy provided that the *subsidiary* at the date of its acquisition has total gross assets which are less than twenty (20) per cent of the *insured entity's* total gross assets;

If the new *subsidiary* fails to meet the condition above, the *insurer* hereby agrees to provide cover hereunder in respect of such new entity from the date of acquisition or at the expiry of the *policy period* for ninety (90) days, provided that during which time the *policyholder* shall provide such additional information as may be reasonably required by the *insurer* and pay any additional premium as may be reasonably required by the *insurer*.

During such ninety (90) day period, the *policyholder* may request that the *insurer* provides cover for the new *subsidiary* for the *policy period*. In exercising its discretion in relation to this request, the *insurer* must act reasonably.

If the *insurer* agrees to this request, the *policyholder* shall pay any additional premium as may be reasonably required by the *insurer*.

In the event that the *insurer* refuses such a request, the *insurer* will provide to the *policyholder* a written confirmation of such refusal within fourteen (14) days of receipt of the *policyholder's* request, together with a written statement of the reasons why such request was refused.

Cover as is afforded to such *subsidiaries* by virtue of this extension shall only apply for *wrongful act(s)* and other covered act(s), committed while such *subsidiary* is or was a *subsidiary* of the *policyholder*.

- (ii) Cover under this policy is extended to include any company or undertaking in which the *policyholder*, either directly or indirectly through one or more of its *subsidiaries*, has an interest and which does not fall within the definition of “subsidiary” in Definition 2.29, provided that the *policyholder* shall provide such additional information about the company or undertaking as may be reasonably required by the *insurer* and shall pay, if the *insurer* agrees to extend this policy to include such company or undertaking, any additional premium as may be reasonably required by the *insurer*.

Cover as is afforded to any such company or undertaking by virtue of this extension shall only apply for *wrongful act(s)* and other covered act(s), committed while the *policyholder* had an interest in such company or undertaking.

4.2 Heirs, Estates and Legal Personal Representatives

The *insurer* will pay for *loss* in respect of a *claim* first made against the estates, heirs, legal personal representatives or assigns of any deceased, incompetent, insolvent or bankrupt *individual insured* during the *policy period* and notified to the *insurer* during the *policy period* provided such *claim*:

- (i) is made against them solely because of their status as estates, heirs, legal personal representatives or assigns of that deceased, incompetent, insolvent or bankrupt *individual insured*; and
- (ii) would be covered under this policy if made against that *individual insured*.

4.3 Joint Property Liability

The *insurer* will pay for *loss* in respect of a *claim* first made against the lawful spouse or other legally recognized domestic partner of an *individual insured* during the *policy period* and notified to the *insurer* during the *policy period* provided such *claim*:

- (i) is made solely because of his or her status as the lawful spouse or domestic partner of that *individual insured*; and
- (ii) would be covered under this policy if made against that *individual insured*; and
- (iii) seeks damages recoverable from the marital community property, or from property jointly held by that *individual insured* and the lawful spouse or domestic partner, or from property transferred from that *individual insured* to the lawful spouse or domestic partner.

4.4 Representation at Investigations and Examinations

This policy shall provide cover for any reasonable fees, costs and expenses incurred with the prior written consent of the *insurer*, such consent not to be withheld unreasonably, (but not including internal costs such as wages, salaries or other remuneration) attributable to any official investigation, examination, inquiry or other similar proceeding in relation to the affairs of the *insured entity* where attendance is

required of the *individual insured* of the *insured entity* which does not qualify as a *claim* under Definition 2.6 (iii) of this policy, provided that the notice requiring the *individual insured's* attendance at any such official investigation, examination or inquiry is received by the *individual insured* during the *policy period*.

Notwithstanding, the cover provided by virtue of this extension 4.4 shall not include fees, costs or expenses attributable to any official investigation, examination, inquiry or other similar proceeding arising from an event that affects the industry in which the *policyholder* conducts its business activities, as opposed to affecting primarily the *policyholder* itself.

If the *individual insured* of the *insured entity* believes that as a result of any such official investigation, examination, inquiry or other similar proceeding, circumstances exist which may reasonably be expected to give rise to a *claim*, notice must be given to the *insurer* of the circumstances and the reasons for anticipating a *claim*, in accordance with General Provision 5.7.

It is further agreed that the total aggregate limit of liability for fees, costs and expenses that the *insurer* shall be liable to pay pursuant to the cover provided by this extension is specifically sub-limited to USD 1,250,000 in the aggregate (the "*sub-limit of liability*"). The *sub-limit of liability* is part of and not in addition to the total aggregate *limit of liability* and will in no way serve to increase the *insurer's limit of liability* as specified therein.

4.5 **Discovery Period**

If this policy is not renewed, then the *policyholder* shall have the right to a *discovery period* of twelve (12) months following the effective date of non-renewal upon payment of an additional premium of one hundred (100) per cent of the full annual premium, being the annual premium level in effect immediately prior to the end of the *policy period*.

The *insured* shall be entitled to a forty five (45) day *discovery period* at no additional premium if this policy is not renewed by the *insurer*. If the *policyholder* elects to purchase a *discovery period*, this forty five (45) day *discovery period* shall be part of and not in addition to the purchased *discovery period*.

To purchase the *discovery period*, the *policyholder* must request its purchase in writing within fifteen (15) days of the termination date of this policy and must tender the additional premium within thirty (30) days of the termination date. In the event that the *discovery period* is cancelled at any time by the *policyholder*, the earned additional premium shall be computed pro rata and any unearned additional premium shall be refunded forthwith to the *policyholder* provided that the *policyholder* has provided to the *insurer* a written statement which releases the *insurer* from all liability under the policy.

No *discovery period* of any length is available in the event of this policy being cancelled due to the non payment of premium.

4.6 Mitigation Costs

The *insurer* will indemnify any *insured entity*, as part of the *limit of liability* for *mitigation costs* incurred with the *insurer's* prior written consent. If the *insurer's* prior written consent cannot reasonably be obtained before *mitigation costs* are incurred, then the *insurer* will give retrospective approval for such *mitigation costs*.

Mitigation costs mean all reasonable fees, costs and expenses incurred by the *insured entity* as a direct result of action taken to prevent, limit or mitigate loss arising from a *wrongful act* which the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer or General Counsel (or equivalent positions) of the *insured entity* reasonably considers would give rise to a *claim* against the *insured entity*.

Mitigation costs shall not include any sum paid or agreed to be paid in lieu of or in settlement or compromise of:

- (i) a fine or penalty;
- (ii) punitive, exemplary multiple or aggravated damages;
- (iii) taxes;
- (iv) wages, salaries, remuneration or any employment-related benefits of any *insured person*; or
- (v) amounts which are uninsurable under the laws pursuant to which this policy is construed.

It shall be a condition precedent to the liability of the *insurer* for *mitigation costs* that the *insured entity* establishes to the reasonable satisfaction of the *insurer* that:

- (i) no *individual insured* had knowledge of the *wrongful act* which resulted in the payment of *mitigation costs* before inception of the *policy period*;
- (ii) if the *insured entity* did not take action to prevent, limit or mitigate loss arising from a *wrongful act*, then a *claim* would have been made against it in respect of such *wrongful act* and such *claim* would have been a covered *claim* pursuant to the terms, conditions and exclusions of this policy;
- (iii) the *insured entity* took all reasonable steps to avoid or diminish mitigation costs;
- (iv) the amount of *mitigation costs* does not exceed the amount of loss which would have been payable by the *insurer* had a *claim* been made against the *insured entity* for a *wrongful act*; and
- (v) where the *insurer's* prior written consent cannot be reasonably obtained before mitigation costs are incurred by the *insured entity*, the payment of such *mitigation costs* is reported to the *insurer* as soon as reasonably practicable, but in all events no later than during the *policy period* or *discovery period*.

The liability of the *insurer* shall not exceed that which would have existed in the event that a *claim* had been made against the *insured entity*.

4.7 Foreign Corrupt Practices Act

Cover under this policy is extended to *claims* made against any *individual insured* of the *insured entity* for any violation of:

- (i) the Foreign Corrupt Practices Act, 15 USC Sections 78dd -1 and 78dd - 2 as amended by the International Anti-Bribery and Fair Competition Act of 1998, ("Foreign Corrupt Practices Act") of the United States of America; or
- (ii) any similar legislation in any other jurisdiction, including any legislation adopting the provisions of the 'Convention on Combating Bribery of Foreign Public Officials in International Business Transactions' signed by certain Organization for Economic Cooperation and Development ("OECD") countries on 17 December 1997, as well as any legislation adopting the provisions of the 'Inter-American Convention Against Corruption' effective from 20 March 1997 for certain Organization of American States ("OAS") countries.

For the purposes of this extension, *loss* shall include fines and penalties assessed against any *individual insured* of the *insured entity* pursuant to Section 78ff (c) or Section 1 78dd – 2(g) (2) of the Foreign Corrupt Practices Act. This shall specifically include those fines and penalties for which the *insured entity* is not permitted to indemnify the *individual insured* to the fullest extent permitted by law.

The *insurer's* liability for cover under this extension shall not exceed USD 250,000 per *individual insured*, subject to a maximum of USD 2,500,000 per claim. The insurer's total aggregate liability for cover under this extension shall not exceed USD 2,500,000.

5. General Provisions

5.1 Representation

In granting cover to any one *insured*, the *insurer* has relied upon the material statements and particulars in the proposal together with its attachments and other information supplied. These statements, attachments and information are the basis of cover and shall be considered incorporated into and constituting part of this policy.

5.2 Single Policy

This policy is a single contract of insurance and if more than one *insured* is covered, this policy shall nevertheless be and remain a single contract of insurance for the benefit of the *insured* as joint *insured* and accordingly, without limitation:

- (i) the *policyholder* shall act for itself and for all *insureds* for all purposes under this policy, including but not limited to the giving and receiving of notice, the giving of notice of a *claim* or *loss*, the payment of premiums that may become due and the receipt and acceptance of any endorsements issued to form a part

of this policy and the exercising or declining to exercise any right to a *discovery period*;

- (ii) payment of any *loss* under this policy to the *policyholder* shall fully release the *insurer* with respect to such *loss* (but only where such payment is full and final in respect of the relevant *loss* and not partial only), however, in the event that any *loss* sustained by any United Kingdom Pension Fund is covered under this policy, payment shall be made by the *insurer* to the trustees of such funds for and on behalf of the beneficiaries;
- (iii) if the *policyholder* is more than one entity and any such entity ceases for any reason to be covered under this policy, then the remaining entities shall be considered to be the *policyholder* for all purposes under this policy;
- (iv) the *insurer's* liability for *loss* sustained by any or all of the *insured* shall not exceed the amount for which the *insurer* would be liable had all such *loss* been sustained by any one of the *insured*;
- (v) in calculating *loss* covered under this policy, where another *insured* receives a benefit corresponding or relating to such *loss*, that benefit will be set off against the value of such *loss*;
- (vi) *loss* sustained by any nominee organized by the *insured entity* for the purpose of handling certain of its business transactions shall be deemed to be *loss* sustained by the *insured entity*.

5.3 Changes in Risk During Policy Period

- (i) If during the *policy period* a *transaction* takes place with respect to any *insured entity* then the cover provided under this policy with respect to such *insured entity* and any *subsidiary* is amended to apply only to *wrongful act(s)*, committed prior to the effective date of the *transaction*.

The *policyholder* shall give the *insurer* written notice of the *transaction* as soon as practicable, but not later than thirty (30) days after the effective date of the *transaction*.

- (ii) Cover for any *claim* against the *insured entity* or an *individual insured* of an *insured entity* shall apply only for *wrongful acts* committed while such entity is an *insured entity* and while such *individual insured* serves in an *individual insured capacity*.

5.4 Cancellation

This policy may be cancelled as follows:

- (i) by the *insurer* for non payment of premium; or
- (ii) by mutual agreement between the *insurer* and the *policyholder*, provided that, in the event of such cancellation, the earned premium shall be computed pro rata and any unearned premium shall be refunded forthwith to the *policyholder*

provided that the *policyholder* has provided to the *insurer* a written statement which releases the *insurer* from all liability under the Policy.

In the event that an *insurer*:

- (i) ceases underwriting; or
- (ii) is the subject of an order or resolution for winding up or formally proposes a scheme of arrangement; or
- (iii) has its authority to carry on insurance business withdrawn,
- (iv) has its financial strength rating reduced by A.M. Best's, Standard & Poor's or equivalent rating agency to less than A-,

the *policyholder* may terminate that *insurer's* participation on this risk forthwith by giving notice and the premium payable to that *insurer* shall be pro rata to the time on risk. In the event there are any notified, reserved or paid losses in the *policy period*, premium shall be deemed fully earned. Any return of premium shall also be subject to a written full release of liability from the *policyholder*.

5.5 Limit of Liability

The *limit of liability* is the total aggregate limit of the *insurer's* liability for all *losses* arising out of all *claims* made against all *insureds* under this policy combined, reported or *discovered* during the *policy period*. The limit of liability for the *discovery period* shall be part of and not in addition to the total aggregate limit of liability for the *policy period*.

A *claim* which is made, or a *loss* which is *discovered* subsequent to the *policy period* or the *discovery period* which pursuant to General Provision 5.7 is considered made during the *policy period* or the *discovery period* shall also be subject to the same total aggregate *limit of liability*.

Defense costs are part of *loss* and subject to the total aggregate *limit of liability* for *loss*.

5.6 Retention

The *insurer* shall only be liable for the amount of *loss* that is in excess of the *retention*. The *retention* amount shall be borne by the *insured* and shall remain uninsured. A single *retention* amount shall apply to each *single claim*.

5.7 How to Give Notice and Report a Claim/Loss

It is a condition precedent to the insured's liability in respect of any claim that the insured has given notice to the insurer of::

- (i) any *claim* made against the *insured*; or

(ii) any *circumstance*,

within sixty (60) days after the *claim* or *circumstance* is brought to the attention of the *policyholder's* Insurance Risk Manager, General Counsel or Chief Financial Officer (or a designated alternate) provided always that, in the reasonable opinion of the *policyholder's* Insurance Risk Manager, General Counsel or Chief Financial Officer (or designated alternate) having regard to the facts and information then available to him, the value of such *claim* or *circumstance* is reasonably likely to exceed USD \$3,750,000.

Notwithstanding the foregoing, it is agreed that the *insured* will notify all other *claims* or *circumstances* brought to the attention of the *policyholder's* Insurance Risk Manager, General Counsel or Chief Financial Officer (or a designated alternate) to the *insurer* by bordereau prior to the end of the *policy period*. The insurers agree that all *claims* or *circumstances* notified to the insurers under the terms of this policy shall attach to the *policy period*.

If, during the *policy period* or the *discovery period*, written notice of a *claim* or *circumstance* is given to the *insurer* pursuant to the terms and conditions of this policy, then any *claim* arising out of, based upon or attributable to the facts of or to a *wrongful act* alleged in that *claim* or *circumstance*, shall be considered made against the *insured* and reported to the *insurer* at the time the first notice was given.

All notifications of *claims* and *circumstances* under this policy must be in writing and properly addressed to the *insurer* at the following address:

MFG Assurance Company Limited
Vallis Building, 3rd Floor
58 Par-la-Ville Road
Hamilton HM 11
Bermuda

If posted the date of posting shall constitute the date that notice was given, and proof of posting shall be sufficient proof of notice.

5.8 Advancement of Costs

Except to the extent that the *insurer* has denied a *loss*, and subject to the *limit of liability* and *retention*, the *insurer* shall advance *defense costs* incurred to the *insured* in respect of any *claim* prior to the final resolution of the *claim*. Such payments must be repaid to the *insurer* by the *insured*, severally according to their respective interests, in the event and to the extent that the *claim* is ultimately determined not to be covered, or resolved on terms or in a manner which exclude it from coverage under this policy.

5.9 How Defense Will Be Conducted

The *insurer* does not assume any duty to defend any *claim*. The *insured* shall, with the *insurers* consent, have the right to choose defense counsel, consent not to be unreasonably withheld. The *insured* shall defend and contest any *claim* made against them, however the *insurer* is entitled to *associate effectively* with the *insured* in

defense of any *claim* that appears likely to involve them including but not limited to being entitled to *associate effectively* with the negotiation of any settlement.

In relation to any *claim* for which cover is sought under this policy which is (or is reasonably likely to exceed USD 3,750,000, the *insured* shall not, without the prior written consent of the *insurer*, admit liability or assume any liability for or settle any *claim* or incur any *defense costs*. Only those settlements and *defense costs* which have been consented to by the *insurer* (if such consent was necessary) shall be recoverable as *loss* under this policy. The *insurer's* consent shall not be unreasonably withheld provided that the *insurer* is entitled to *associate effectively* in the defense and negotiation of any settlement of any *claim* in order to reach a decision as to reasonableness.

The *insurer* shall have the right to make investigation, conduct negotiations and, with the written consent of the *insured*, settle any *claim*, on such terms and in such manner as the *insurer*, acting reasonably, deems expedient.

5.10 Allocation

- (i) In the event that any *claim* involves both covered matters and matters not covered under this policy, a fair and proper allocation of any *loss* shall be made between the *insured* and the *insurer* taking into account the relative legal exposures attributable to covered matters and matters not covered under this policy.
- (ii) In the event that any exclusion in this policy applies to any part of a *claim*, the *insured* shall not be prevented from seeking recovery under this policy for any other part of the *claim* which is not so excluded.
- (iii) In the event that a determination as to the amount of *defense costs* to be advanced to the *insured* under this policy cannot be agreed to, then the *insurer* shall advance *defense costs* which the *insurer*, acting reasonably, states to be fair and proper until a different amount shall be agreed upon.

5.11 Subrogation

In the event of payment under this policy in respect of a *claim*, the *insurer* shall be subrogated to the extent of such payment to all of the *insured's* rights of recovery in respect of payment and shall be entitled to pursue and enforce such rights in the name of the *insured*. The *insured* shall provide the *insurer* with all reasonable assistance and co-operation including the execution of all papers required and shall do everything that may be necessary to secure any rights including the execution of any documents necessary to enable the *insurer* effectively to bring suit in the name of the *insured*. The *insured* shall do nothing to prejudice those rights. In no event however, shall the *insurer* exercise its rights of subrogation against an *individual insured* under this policy unless such *individual insured* has:

- (i) gained any profit to which such *individual insured* was not legally entitled; or
- (ii) committed or attempted to deliberately commit, aided, abetted, counseled, procured, incited, participated in or connived at, any criminal, fraudulent or malicious act; or

provided that the insurer shall only be able to exercise such rights of subrogation if it is expressly stated or held through a final adjudication adverse to the *individual insured*, or any admission by an *insured entity* that the relevant conduct did in fact occur.

In the event that the *insurer* makes a payment to the *insured* in respect of a *claim* and subsequently reclaims such payment, the insurer shall take all steps necessary to subrogate to the *insured* any rights which have been subrogated to the *insurer* pursuant to this clause.

5.12 Other Insurance

Unless otherwise required by law, any insurance as is provided under this policy shall apply only as specifically excess over any other valid and collectible insurance or indemnity available to the *insured*. This policy shall provide insurance in respect of the amount by which *loss* exceeds such other insurance or indemnity available to the *insured* or the *retention* of this policy, whichever is the greater.

5.13 Recoveries

Any amount recovered (except from insurance, reinsurance, sureties or indemnity) following a paid *loss* under this policy, will be allocated in the following order of reimbursement:

- (a) the costs and expenses reasonably and necessarily incurred in relation to the recovery to be allocated pro rata between the *insured* and the *insurer* on the basis they have been paid;
- (b) any *loss* in excess of the limit of liability specified in Item 3 of the Schedule;
- (c) the *loss* paid by this policy; and
- (d) the *retention*.

5.14 Wrongdoing

For the purposes of determining the applicability of this policy (and, in particular, for the purposes of determining the applicability of the Exclusions contained in clause 3 of this policy), any wrongdoing or any other act carried out by any *insured* shall not be imputed to any other *insured*.

5.15 Assignment

This policy and any rights hereunder cannot be assigned by either party without written consent of the other.

5.16 Governing Law

Any interpretation of this policy relating to its construction, validity or operation shall be made in accordance with the laws of the State of New York and in accordance with the English Text as it appears in this policy.

Notwithstanding the above, it is understood that *loss* shall include awards of punitive, exemplary and multiple damages (where insurable by law) and enforceability of this paragraph shall be governed by such applicable law which most favors coverage for punitive, exemplary and multiple damages.

5.17 Titles and Italics

Titles are included for convenience only and do not affect interpretation of this policy. Words and expressions in the singular include the plural and vice versa. Words in italics have special meaning and are defined. Words that are not specifically defined in this policy have the meaning normally attributed to them.

5.18 Contracts (Rights of Third Parties) Act 1999

Nothing in this policy is intended to confer a directly enforceable benefit to any party other than the *insured*, whether pursuant to Section 1(a) and Section 1(2) of the Contracts (Rights of Third Parties) Act 1999 (UK) or the equivalent legislation in any applicable jurisdiction.

5.19 Legislation

References in this policy to any statutory provisions shall be deemed also to refer to any statutory modifications or re-enactments thereof or any statutory instrument, order or regulation made thereunder.

5.20 Several Liability Notice

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

5.21 Innocent Non Disclosure

In the event of the *insurer* being at any time entitled to avoid this policy ab initio by reason of the inaccuracy or omission of any material information given or which ought to have been given by the *insured*, the *insurer* may, at its election, instead of voiding this policy ab initio, give notice to the *insured* that it regards this policy as in full force and effect save that there shall be excluded ab initio from the indemnity afforded hereunder any *loss* which has arisen or which may arise and which is related to the circumstances which ought to have been disclosed but which were not disclosed to the *insurer*. This policy shall then continue in full force and effect but shall be deemed to exclude, as if the policy has been specifically endorsed ab initio, the particular or possible *loss* referred to in the notice given to the *insured*.

**MFG ASSURANCE COMPANY LIMITED
THE VALLIS BUILDING
58 PAR-LA-VILLE ROAD
P.O. BOX HM 1995
HAMILTON HM HX
BERMUDA**

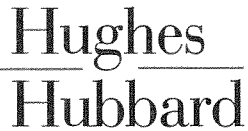
**Telephone No: (441) 295-1272
Telecopier No: (441) 295-4143**

POLICY NO: 1-18002-00-11

**PERIOD: 31 MAY 2011 to
31 MAY 2012**

**DESCRIPTION: PROFESSIONAL LIABILITY
INSURANCE**

Exhibit F



Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, New York 10004-1482
Telephone: 212-837-6000
Fax: 212-422-4726
hugheshubbard.com

Vilia B. Hayes
Direct Dial: 212-837-6839
Direct Fax: 212-299-6839
hayes@hugheshubbard.com

May 5, 2014

VIA E-MAIL

Stephen Doody, Esq.
Allen & Overy LLP
1221 Avenue of the Americas
New York, NY 10020

John McCarrick
White and Williams LLP
One Penn Plaza
250 W. 34th Street, Suite 4110
New York, NY 10119-4115

Michael P. Fried
Assistant Vice President
LVL Claims Services LLC
30 Broad Street, 28th Floor
New York, NY 10004

Mary Jo Barry
D'Amato & Lynch
Two World Financial Center
225 Liberty Street
New York, New York 10281

Tracy Tkac
Assistant Vice-President
Chubb Group of Insurance Companies
15 Mountain View Road
Warren, NJ 07059

Re: Insured: MF Global, Inc., a subsidiary of MF Global Holdings Ltd.
Policy Nos.: 1-18001-00-11, 1-18002-00-11, 1-18003-00-11,
1-18004-00-11, 1-18005-00-11, 1-18005-01-11,
1-18006-00-11, 1-18009-00-11, 1-18010-00-11,
1-18011-00-11, 1-18011-01-11, 1-18012-00-11
Policy Period: May 31, 2011 to May 31, 2012

Dear Mr. Doody, Mr. Fried, Ms. Tkac, Mr. McCarrick and Ms. Barry:

I write on behalf of James W. Giddens, SIPA Trustee for MF Global, Inc. ("MFGI") and assignee and subrogee of the claims of MFGI's former customers related to the class action, with the concurrence of MF Global Holdings, Ltd. ("MFGH"). The SIPA Trustee has now completed the process of determining all customer claims asserted in the SIPA proceeding and has substantially completed the process of marshaling the assets of the MFGI estate. As a result of these exhaustive efforts, the customer claims against MFGI arising from the failure to properly segregate customer funds has been conclusively quantified at \$548.4

million. As this amount exceeds the remaining coverage under the Policies, the SIPA Trustee demands that MFG Assurance Company, Ltd. (“MFGA”) tender the remaining limits of the above-referenced policies (the “Policies”) to MFGI in order to satisfy the claims against MFGI by its former customers and to fulfill MFGA’s long overdue obligations to MFGI as an insured under the Policies in connection with those customer claims.¹

Since your insured, MFGI, first submitted its claim for coverage of the customer claims to MFGA on March 28, 2012, MFGA has steadfastly refused to pay on the claim under a reservation of rights. Without repeating the entirety of our prior correspondence, which we incorporate here by reference, the SIPA Trustee, the MFGH Trustee, the U.S. Congressional Committee on Financial Services, and the U.S. Commodity Futures Trading Commission (“CFTC”) have all concluded that individuals at MFGI failed to properly segregate customer funds, in violation of, among other things, statutory obligations. That failure irrefutably constitutes a wrongful act as defined by the Policies, mandating coverage for MFGI’s loss as measured by the customers’ proofs of claim filed against MFGI in MFGI’s SIPA proceeding and similar claims in the class action. Judge Marrero, in denying motions to dismiss the claims brought in the consolidated securities class action, concluded:

Plaintiffs’ allegations suggest a long, knowing and consistent course of action on the part of the various Defendants, wrongful conduct that cumulatively produced the harmful outcome that came to pass. Moreover this account is not based on pure speculation or the traditional pleading foundation grounded on information and belief. Rather, Plaintiffs’ portrayal of the facts possesses an added measure of reliability and plausibility. It draws heavily from the public record of information generated by various investigations performed by government regulators and congressional committees.

See In re MF Global Holdings Secs. Litig., No. 11 Civ. 7866 (VM), 2013 U.S. Dist. LEXIS 161224, 18-19 (S.D.N.Y. Nov. 12, 2013). In denying motions to dismiss the claims brought in the customer class action, Judge Marrero reiterated:

[T]he D&O Defendants cannot overcome the inconvenient reality that the facts contained in the CAC, if true, give rise to two reasonable inferences; that a massive collapse such as that which MF Global experienced does not occur in a vacuum, nor in a corporate environment characterized by diligent management and vigilant oversight by officers and directors; and that in this case senior MF Global and MFGI officers failed in properly exercising their legal responsibilities to MFGI's customers.

Deangelis v. Corzine (In re MF Global Holdings Inv. Litig.), No. 11 Civ. 7866 (VM), 2014 U.S. Dist. LEXIS 17205 (S.D.N.Y. Feb. 11, 2014).

¹ All customer claims against the MFGI estate for which coverage is sought are publicly available through the claims register on the MFGI bankruptcy website at <http://dm.epiq11.com/MFG2/Claim>.

The defendants' conduct in failing to maintain the segregation of customer funds and allowing or directing their use for other purposes are "wrongful acts" under the Policies that "[arise] out of the provision of, or failure to provide the services" for customers or clients. There is nothing more basic to the "provision of services" of a regulated futures commissions merchant ("FCM") and broker-dealer than maintaining custody, segregation, and accurate records of customer property and complying with the customer protection rules governing the conduct of an FCM that allow it to do business. It cannot be disputed that the business MFGI, its officers, directors and employees conducted and the services it provided to its commodities and futures customers were required to be conducted in accordance with the Commodity Exchange Act and regulations issued by the CFTC. These regulations prescribed how those services were to be performed, including maintaining customer funds in segregated accounts. The loss of customer funds clearly was a loss caused by a failure to provide mandated services to MFGI's customers and "other wrongful acts."

Further, in light of recent decisions from the Bankruptcy Court and District Court, there is no longer any question as to the magnitude of the loss suffered by MFGI's customers as a result of these "wrongful acts." As you are aware, on November 6, 2013, Judge Glenn entered an Order (the "November 6 Order") authorizing the SIPA Trustee to advance funds from MFGI's general estate in order to effectuate a 100% distribution to MFGI's commodities customers. I attach a copy of that order here. The November 6 Order explicitly recognizes a \$560 million deficit, which is now \$548.4 million in MFGI's commodities customer estates.² On February 20, 2014, Judge Marrero affirmed the Bankruptcy Court's November 6 Order, holding that the Bankruptcy Court "based its determination on an adequate record and with a substantial basis in fact." See *PriceWaterhouseCoopers LLP v. Giddens (In re MF Global, Inc.)*, No. 13 Civ. 8893 (VM), 2014 U.S. Dist. LEXIS 23433 (S.D.N.Y. Feb. 20, 2014) ("[T]he Court affirms the Bankruptcy Court's finding of a shortfall in the customer estates."). MFGA can no longer feign doubt that the customer claims against MFGI are covered, that those claims amount to a damages level that far exceeds the E&O Policy limits, and that such damages represent a covered loss under those Policies. In sum, the \$548.4 million deficit dwarfs the remaining untapped limits of approximately \$146 million in available professional liability coverage.

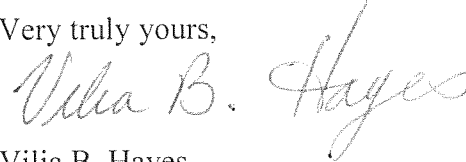
MFGA has delayed far too long already in owning up to its coverage obligations to the SIPA Trustee as successor to MFGI (as an insured under the Policies against whom covered claims have been brought) and as assignee and subrogee of the claims of MFGI's customers asserted in the class action. The SIPA Trustee has duties to customers and creditors that are unnecessarily being prejudiced by MFGA's unreasonable tactics of delay and diversion. The time for MFGA to claim a need to "wait and see" with respect to acknowledging the existence of a covered loss in excess of the limits of the Policies has long since passed, and MFGA should pay whatever limits remain as of the date of this letter without further delay. MFGA has no excuse for any additional delay in distributing whatever limits remain to MFGI in

² The \$560 million deficit referenced in the November 6 Order was subsequently reduced by \$11.6 million as a result of the Trustee's settlement with the CME.

satisfaction of the customer claims and MFGI's attendant loss under the Policies. We therefore demand payment of the full available policy limits of the E&O tower in satisfaction of the claim the SIPA Trustee has asserted against this coverage. The SIPA Trustee reserves all of MFGI's rights under the Policies and at law.

We look forward to your response.

Very truly yours,

A handwritten signature in cursive script that reads "Vilia B. Hayes". The signature is written in dark ink and is positioned to the right of the typed name.

Vilia B. Hayes

cc: Leslie S. Ahari
James A. Skarzynski.
Mary Anne Mullin
Edward J. Kirk
Robert A. Benjamin
Scott R. Schaffer
Bruce Bennett
David W. Steuber
Jennifer J. O'Neil

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

In re

MF GLOBAL INC.,

Debtor.

Case No. 11-2790 (MG) SIPA

**ORDER GRANTING THE TRUSTEE'S MOTION TO (I) APPROVE THE
TRUSTEE'S ALLOCATION OF PROPERTY AND (II) APPROVE AN
ADVANCE OF GENERAL ESTATE PROPERTY FOR THE PURPOSE OF
MAKING A FINAL 100% DISTRIBUTION TO FORMER COMMODITY
FUTURES CUSTOMERS OF MF GLOBAL INC.**

Upon consideration of the Motion¹ dated October 2, 2013, of James W. Giddens (the "Trustee"), as Trustee for the liquidation of MF Global Inc. ("MFGI" or the "Debtor") under the Securities Investor Protection Act ("SIPA"), pursuant to section 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), and 17 C.F.R. sections 190.01 through 190.10 (the "Part 190 Regulations" or the "CFTC Rules") for entry of an order (i) approving the Trustee's final allocation of property between the customer and general estates; and (ii) authorizing the Trustee to advance property from other sources for allocation to the 4d and 30.7 Estates and to permit distribution of such property to permit one hundred percent distribution of all allowed customer net equity claims; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with SIPA § 78eee(b)(4); and venue being proper before this Court pursuant to SIPA § 78eee(a)(3) and 15 U.S.C. § 78aa; and upon consideration of the Motion, any objections thereto, briefs and arguments of counsel, the Affidavit of Josiah S. Trager executed on October 2, 2013; and due and proper notice of the Motion having been provided, including in accordance with the Amended Case Management Order, to all parties in interest,

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

and it appearing that the notice of the Motion is sufficient, adequate, and timely under the circumstances of this case and that no other or further notices need be provided; and a reasonable opportunity to object or be heard regarding the motion having been given to all such parties; and a full and fair opportunity having been afforded to litigate all issues raised in all objections, or which might have been raised, and all objections having been fully and fairly litigated;

ORDERED, that the Motion is granted in all respects; and it is further

ORDERED, the DCO Customer Property, the Segregated Bank Property, the Secured Bank Property, the Customer Post-Petition Income, the Customer Account Debits, the Account 9102591063 Balance, the MFG Canada Settlement Payment, the Initial MFGUK Distribution and the Future MFGUK Distributions constitute customer property as defined in Section 761(10) of the Bankruptcy Code and CFTC Rule 190.08(a)(i)-(ii); and it is further

ORDERED, that the Trustee's allocation of DCO Customer Property, the Segregated Bank Property, the Secured Bank Property, the Customer Post-Petition Income, the Customer Account Debits, the Account 9102591063 Balance, the MFG Canada Settlement Payment, the Initial MFGUK Distribution and the Future MFGUK Distributions to the 4d and 30.7 Estates as detailed in the Motion is approved; and it is further

ORDERED, that the Marshaled Proprietary Property, the CME Proprietary Assets, and the Returned Collateral are property of the general estate of MFGI; and it is further

ORDERED, that the Securities Excess is property of the general estate of MFGI pursuant to SIPA § 78fff-2(c)(1); and it is further

ORDERED, that the Trustee is authorized to advance funds from the general estate of MFGI, in an amount that does not vary materially from \$233 million, to the 4d and 30.7 customer estates in order to satisfy all allowed customer net equity claims and that this advance,

as well as all previous advances authorized by the Court are now final and complete and are based on this Court's determination that the total current deficit across the commodities estates is at least \$560 million (\$345 million in the 4(d) Estate and \$215 million in the 30.7 Estate); and it is further

ORDERED, that the Trustee is authorized to allocate the funds advanced from the general estate of MFGI between the 4d and 30.7 Estates in such a manner so as to allow the full satisfaction of all allowed customer net equity claims; and it is further

ORDERED, that once all allowed customer claims are satisfied, any property hereafter recovered by the Trustee will be directed to the general estate of MFGI, including the Future MFGUK Distributions; and it is further

ORDERED that, the Trustee, acting as representative of the MFGI general estate and its creditors, is the assignee of, and otherwise subrogated to, the rights of all customers and is hereby specifically authorized by this Court to pursue claims against third parties based on the deficit in the 4d and 30.7 customer estates to the extent that general estate funds have been advanced (either by prior Order of the Court or pursuant to this Order) to satisfy allowed customer net equity claims (the "Assigned Claims"), including without limitation the right to receive any and all recoveries recovered or collected by the Customer Representatives in the Customer Class Action or in connection with the Customer Class Action solely in satisfaction of those Assigned Claims. For avoidance of doubt, all potential claims of customers against third parties to recover for the shortfall in the 4d and 30.7 Estates in existence as of the moment before any advances of funds from the general estate (which this Court finds to be in the amount of at least \$632 million) shall be preserved for the benefit of the Trustee as assignee and subrogee; and it is further

ORDERED, that the Assignment Agreement is approved; and it is further

ORDERED, that pursuant to the Trustee's assignment of general creditor claims to the Customer Representatives contained in the Continued Cooperation and Assignment Agreement approved on October 11, 2012, the Customer Representatives will continue to pursue and enforce the Assigned Claims subject to the terms of the Continued Cooperation and Assignment Agreement and the Customer Representatives' interim co-lead counsel and executive committee counsel are entitled to seek reasonable fees pursuant to terms of the Continued Cooperation and Assignment Agreement , and it is further

ORDERED, that pursuant to the Part 190 Regulations, the Trustee is authorized and shall use his best efforts to distribute all property constituting the 30.7 and 4d Estate or advanced to the 30.7 and 4d Estate (either through this Order or by any previous Order of the Court) in order to effect one hundred percent distributions to all unpaid allowed customer net equity claims; and it is further

ORDERED, that the Trustee is authorized to take any and all actions reasonably necessary to effectuate the relief granted in this Order; and it is further

ORDERED, that the Court shall retain jurisdiction to hear and determine all matters arising from or related to this order

ORDERED that this Order shall be effective and enforceable immediately upon entry and shall constitute a final order within the meaning of 28 U.S.C. § 158(a). To the extent applicable, Bankruptcy Rule 6004(h) is hereby waived.

Dated: November 6, 2013
New York, New York

/s/Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge

Exhibit G

ALLEN & OVERY

VIA EMAIL & MAIL

Vilia B. Hayes, Esq.
Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, NY 10004-1482

Allen & Overy LLP
1221 Avenue of the Americas
New York NY 10020

Tel 212 610 6300
Fax 212 610 6399
Direct line 212-610-6470
Stephen.doody@allenoverly.com

Our ref: NY:19600075.12

July 25, 2014

Dear Ms. Hayes:

As you know, Allen & Overy LLP acts as US counsel to MFG Assurance Company Limited (**Assurance**). We write in further response to your letter dated May 5, 2014, which follows a long line of communications between Assurance's representatives and your firm. Please note that this letter supplements, and does not supplant, all such prior communications.

Such communications relate to the professional liability policies Assurance issued for a one-year term commencing on May 31, 2011 (**Policies**),¹ in respect of which your client, the SIPA Trustee, who acts for MF Global, Inc. (**MFGI**), has submitted a claim to recover the amount that MFGI's estate has disgorged as restitution to its prior customers during the last three years. Your communications have repeatedly demanded that Assurance accelerate MFGI's claim and make a final determination before the underlying claims relating to the events that led to MF Global's financial failure are determined fully. Your recent letter also repeats MFGI's demand that Assurance tender the remaining limits on the Policies.

In response, Assurance has repeatedly explained that it has been scrutinizing the ongoing litigation concerning such underlying claims that has been consolidated before Judge Marrero in the Southern District of New York (the **MDL**) for the purpose of analyzing the liability and coverage issues that continue to evolve in the MDL, but that it is premature to take a definitive coverage or liability position until the MDL is resolved. You are also aware that, notwithstanding Assurance's very valid concerns about the ongoing development of the underlying claims, Assurance is participating fully in an ongoing mediation that is pointed towards achieving that resolution of the MDL.

Your most recent correspondence suggests that MFGI's claim is now fully adjudicated because MFGI's customers received final distributions from MFGI that afford its customers a 100% restitution of their net equity claims. We disagree. One must distinguish MFGI's eventual return of its customers' funds from a final and binding determination why those customers had been denied their funds or whether that determination will lead to a conclusion that the Policies should reimburse MFGI for its disgorgement of funds to make such restitution.

Any assessment of the claims bought in connection with the collapse of MF Global should recognize that they have continued to be transformed. Memorandum decisions issued by Judge Marrero in the MDL on February 11, 2014 and April 16, 2014 eliminated many of the causes of action and of the Individual Insureds² in the MDL.

¹ The Policies are made up of Policy No: 1-18001-00-11 (the "**Primary Policy**") and certain related excess policies (the "**Excess Policies**") that were effective for the May 31, 2011 to May 31, 2012 policy period. The Excess Policies follow the form of the Primary Policy and all references to Policy language will be to the Primary Policy.

² All capitalized, undefined terms shall have the meanings assigned to them in the Policies.

See DeAngelis v Corzine (In re MF Global, Inc.), No. 11 Civ. 7866, ECF Docs. Nos. 641 and 712. While you also point to governmental investigations, including your client's own investigation, to establish a final determination of your client's claim, the MDL will render the most meaningful findings. You will recall that Judge Glenn, who is supervising MFGI's SIPA proceeding, stated in a hearing on June 28, 2013 that the trustee's reports and the government investigations do not determine the facts, and that the defendants are entitled to put on a defense, in respect of the underlying claims brought as a result of MF Global's financial collapse. *See page 51 of the transcript of the hearing held on June 28, 2013 in case No. 11-15059 before Judge Glenn in the Bankruptcy Court for the Southern District of New York.*

Despite your position that the amount (which later changed) set out in the November 6, 2013 Order of the Bankruptcy Court was the definitive loss suffered by MFGI for the purposes of its claim on the Policies, the Individual Insureds remaining in the MDL continue to dispute that amount and any related liability. In that respect, the Individual Insureds' rights to contest those points were expressly acknowledged by Judge Marrero, before whom the MDL is being litigated. Judge Marrero made clear in his February 20, 2014 decision that the Individual Insureds retain all of their rights to contest the purported shortfall amount and whether the funds used to make restitution to MFGI's customers were customer funds in the first instance such that no assignment or subrogation should obtain. *See PriceWaterhouseCoopers LLP v. Giddens (In re MF Global, Inc.), No. 13 Civ. 8893, ECF Doc. No. 38.* We also point out that the MDL has only recently entered the discovery phase of the litigation. Progression of the MDL will yield a full record that will greatly inform the conclusions that can be drawn as to why MF Global failed and whether the Policies should respond.

We recognize that prior to the recent dismissal of numerous causes of action and Individual Insureds MFGI entered into the Final Consent Order of Restitution, Civil Monetary Penalty and Ancillary Relief Against MF Global Inc. (**CFTC Order**) issued by the District United States Court for the Southern District of New York with the U.S. Commodity Futures Trading Commission (**CFTC**) to provide restitution to MFGI's customers.³ *See U.S. Commodity Futures Trading Commission v MF Global Inc., No. 11 Civ. 7866, ECF Doc. No. 575.* As above, MFGI's purported admissions are not binding on the Individual Insureds on whom MFGI fixed liability. Moreover, MFGI's disgorgement of funds to provide restitution to its customers leaves them with no Loss on their net equity claims. The express terms of the Consent Order require MFGI to provide restitution and it is self-serving for MFGI to claim that the Consent Order cannot be used as evidence in any other matter. In addition to the admissions not having preclusive effect as to the Individual Insureds, however, such admissions are not binding on Assurance's assessment of the claims and the coverage issues.

Under New York law, which governs the Policies pursuant to Section 5.16, it is entirely correct and proper for Assurance to await the development of facts in respect of the underlying claim to make coverage and liability determinations under the Policies. In determining whether coverage under an insurance policy is ripe for judgment, New York law recognizes that the duty to indemnify turns "on the actual liabilities as borne out by the facts." *Travelers Prop. Cas. Corp. v. Winterthur Int'l*, 2002 U.S. Dist. LEXIS 11342 *18 (S.D.N.Y. June 25, 2002); *Servidone Constr. Corp. v. Sec. Ins. Co.*, 64 N.Y.2d 419, 424, (1985) ("The duty to defend is measured against the allegations of pleadings but the duty to pay is determined by the actual basis for the insured's liability to a third person.") Thus, "where the facts on which the Court's decision depends have yet to unfold, a declaratory judgment action is 'not currently a justiciable and ripe controversy and . . . dismissal of the complaint without prejudice is the correct disposition of the action. This leaves open the possibility that at some future time a more complete development of the facts might lead to a different result.'" *Id.* quoting *Certain Underwriters at Lloyd's, London v. St. Joe Minerals Corp.*, 90 F.3d 671, 676 (2d Cir. 1996). Accordingly, New York courts have

³ MFGI's failure to obtain its insurer's consent for entering into that settlement is not in issue at this point

routinely refused to grant declaratory judgments with respect to coverage under insurance policies until there has been an official adjudication of liability on the underlying claim. See *Travelers U.S. Dist. LEXIS 11342* at *19 (explaining that “where the key facts can and will be established in an underlying proceeding -- the lack of ripeness is palpable” and refusing to render a decision on indemnification duty until a determination of liability was made on the underlying tort action); see also *Pavarini Constr. Co. v. Liberty Mut. Ins. Co.*, 704 N.Y.S.2d 72 (1st Dept. 2000) (“Whether the underlying plaintiff’s injuries come within the policy’s exclusion for injuries caused by the additional insureds’ negligence is a question that must await a determination of liability in the underlying action Accordingly, defendant’s arguments on appeal bearing upon whether it has an obligation to indemnify the additional insureds are not properly before this Court.”); *Statt v. Am. Home Assur. Co.*, 595 N.Y.S.2d 700, 701 (4th Dept. 1993) (“This declaratory judgment action is premature. The extent of [defendant’s] duty to indemnify must necessarily depend on the resolution of an issue that, if it arises, will be decided in the underlying action.”).

Were Assurance forced to make a coverage determination at this point, it believes that there are serious coverage issues that could preclude any recovery by MFGI under the Policies. First, MFGI must have a qualifying Loss. Section 2.19 of the Policies defines Loss as:

- (i) *defense costs*; and/or
- (ii) damages, *aggravated damages* as permitted by law, judgments (including pre/post judgment interest), restitution orders of a compensatory nature, *claimant’s costs*, *co-defendant’s costs*, legal costs and expenses awarded against any *insured*; and/or
- (iii) settlements negotiated with the *insurer’s* consent (such consent not to be withheld unreasonably); and/or
- (iv) awards of punitive, exemplary and multiple damages (where insurable by law). Enforceability of this paragraph shall be governed by such applicable law which most favors coverage for punitive, exemplary and multiple damages; and/or
- (v) awards of any referee, arbitrator, the Financial Services Ombudsman or any other ombudsman appointed by the Secretary of State for Trade and Industry or similar *regulator* or by any self-regulatory organization or by any recognized professional body by whose rules the *insured* is bound,

in respect of any claim covered under this policy.

Loss shall not include:

- (a) taxes, unless such taxes form part of an award of damages to a third party;
- (b) wages, salaries or other remuneration of any *insured*;
- (c) the cost of complying with any settlement for or award of non-monetary relief; or
- (d) principal, interest or other monies accrued or due (either now or in the future) but not yet paid to the *insured entity* as a result of any loan, lease or extension of credit.

Exclusion 3.2 of the Policies states that there is no coverage for loss in respect of any claim “arising out of, based upon or attributable to or for...(iv) matters uninsurable under [New York] law”

As a matter of New York law and public policy, amounts paid that are in the nature of restitution and disgorgement are not insurable. See *Millennium Partners, L.P. v. Select Ins. Co.*, 68 A.D.3d 420, 889 N.Y.S.2d 575 (2009) (allowing insurer to deny coverage for legal fees and expenses related to disgorgement of improperly acquired funds); *Vigilant Ins. Co. v. Credit Suisse First Boston Corp.*, 10 A.D.3d 528, 782 N.Y.S.2d 19 (2004) (holding that a hedge fund could not recover from its insurer the amount of a settlement with the SEC that represented the disgorgement of funds improperly acquired);

see also *J.P. Morgan Sec. Inc. v. Vigilant Ins. Co.*, 21 N.Y.3d 324, 992 N.E.2d 1076 (2013) (acknowledging the policy rationale for precluding indemnity for disgorgement which would “in effect [allow the insured to] retain the ill-gotten gains by transferring the loss to its carrier,” but refusing to enforce it where disgorgement paid by Bear Stearns was based on misconduct that enabled its customers to profit, not on misconduct that benefitted Bear Stearns directly). New York law is consistent with the law in other jurisdictions, which have reached the same conclusion. See, e.g., *Ryerson v. Federal Ins. Co.*, 676 F.3d 610, 612-613 (7th Cir. 2012) (“If disgorging such proceeds is included within the policy’s definition of ‘loss,’ thieves could buy insurance against having to return money they stole. No one writes such insurance . . . and no state would enforce such an insurance policy if it were written.”); *Level 3 Commc’ns, Inc. v. Fed. Ins. Co.*, 272 F.3d 908 (7th Cir. 2001) (holding that insurer was not required to cover settlement payments made by insured company to plaintiffs because “[a]n insured incurs no loss within the meaning of the insurance contract by being compelled to return property that it had stolen.”); *Bank of the West v. Superior Court*, 833 P.2d 545, 553 (Cal. 1992) (“it is well established that one may not insure against the risk of being ordered to return money or property that has been wrongfully acquired”); *Local 705 Int’l Brotherhood of Teamsters Health & Welfare Fund v. Five Star Managers, L.L.C.*, 735 N.E.2d 679, 683 (Ill. App. 2000) (“there is no question that the sole basis upon which H&W paid out the settlement amount was the Pension Fund’s claim that H&W was required to return those monies which it had no right to possess in the first place. Such a payment can hardly be termed a loss.”).

In this case, the SIPA Trustee concluded that MFGI improperly removed customer funds from segregated accounts to satisfy the company’s own liquidity needs, and MFGI therefore was required to pay those funds back to customers. As such, all amounts repaid to the customers by MFGI and/or the estates are disgorgement and restitution of funds that MFGI took from the customers. See *Report of Trustee’s Investigation and Recommendation, In re MF Global, Inc., Case No. 11-2790 (MG) SIPA (Bankr. S.D.N.Y.), dated June 4, 2012, at 15* (“Contrary to some public reports, the shortfall of customer property at MFGI was not caused by direct investment of customer funds in sovereign debt or even by losses on proprietary investments such as sovereign debt. Rather, as detailed below, the actions of management and other employees, along with lack of sufficient monitoring and systems, resulted in FCM customer property being used during the liquidity crises to fund the extraordinary liquidity drains elsewhere in the business, including margin calls on the European sovereign debt positions.”); *id. at 96* (“Had customer funds been properly protected, the customer property in Customer Accounts should have been largely if not completely unaffected by the liquidity crisis at MF Global. Instead, those funds were used to fund MF Global’s liquidity needs in at least the latter part of the week of October 24”). See also *U.S. Commodity Futures Trading Commission v. MF Global, Inc., et al., Case No. 13 CV 4463 (S.D.N.Y.) Complaint ¶5* (“During the last week of October 2011, in violation of U.S. commodity laws, with virtually no other sources of cash to keep it afloat, MF Global unlawfully used nearly one billion dollars of customer segregated funds to support its own proprietary operations and the operations of its affiliates.” In the Final Consent Order entered into with the CFTC, MFGI agreed to make “restitution” in the amount of \$1.212 billion to ensure that all 4d and 30.7 Allowed Customer Net Equity Claims to be paid in full. The Policies do not provide coverage for amounts MFGI and/or the estates were required to pay back to MFGI’s customers as restitution because such amounts do not constitute Loss and are uninsurable as a matter of law.

Assurance believes a second preclusion of MFGI’s entitlement to coverage of its claim could be found in the Insured vs. Insured exclusion contained in Section 3.9 of the Policies. The definition of Insured means the “Insured Entity and Individual Insured(s).” Pursuant to Section 2.16 of the Policies, Insured Entity “means the *policyholder* and its *subsidiaries* and in the event a bankruptcy proceeding shall be initiated by or against the *Insured entity*, the resulting debtor in possession (or equivalent status outside the United States).” MFGI presents its claim as an Insured Entity.

Section 2.14 of the Policies states that Individual Insured means:

any past, present or future natural person employed by the insured entity in the ordinary course of the services of the *insured entity* and whom the *insured entity* compensates by way of salary or wages and has the right to govern or direct the performance of that person's duties...

Section 3.9 of the Policies (i.e., the Insured versus Insured exclusion) states that they exclude coverage for any Claim "arising out of, based upon or attributable to any *claim* brought by or on behalf of:

- (i) an *insured*, or successors or assigns of any *insured*; or
- (ii) any entity that is operated or managed or controlled by any *insured*; or
- (iii) the *policyholder's* parent company (or any parent or any subsidiary thereof)

This exclusion shall not apply to any *claim*:

- (a) brought by an *individual insured* as long as such *claim* is brought solely in such claimant's capacity as a customer or client of the *insured entity* and is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any other *insured*;
- (b) brought by an *insured* in respect of an indemnity for a claim by a customer or a client of the *policyholder*;
- (c) any *claim* brought by an *insured* in the form of a cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from a *claim* that is covered by this policy;"

The SIPA Trustee's claim for recovery of funds on MFGI's behalf is precluded because the Claim is presented as on behalf of an Insured (i.e., "attributable to any claim brought by or on behalf of...an *insured*, or successors or assigns of any *insured*"). Moreover, MFGI's claim for Loss can only be based on its allegations against the Individual Insureds. These are manifested in MFGI's purported admissions in the CFTC Order and in MFGI's assignment of its professed claims against Individual Insureds to certain plaintiffs' counsel to prosecute in the MDL. Using third parties in that manner does not alter the fact that MFGI is seeking to assert it has suffered a Loss as a result of the actions or failures of certain Individual Insureds.

MFGI's claim against the Individual Insureds was also highlighted in your letter of May 5, 2014, wherein you state the SIPA Trustee's claim is that:

"The defendants' conduct in failing to maintain the segregation of customer funds and allowing or directing their use for other purposes are "wrongful acts" under the Policies that "[arise] out of the provision of, or failure to provide the services" for customers or clients" and that "It cannot be disputed that the business MFGI, its officers, directors and employees conducted and the services it provided to its commodities and futures customers were required to be conducted in accordance with the Commodity Exchange Act and regulations issued by the CFTC. These regulations prescribed how those services were to be performed, including maintaining customer funds in segregated accounts. The loss of customer funds clearly was a loss caused by a failure to provide mandated services to MFGI's customers and 'other wrongful acts'."

If Assurance were forced to make a coverage determination at this point, the Insured versus Insured exception could thereby exclude coverage for MFGI's claim. Nor can the SIPA Trustee claim an exception that allows him to bring a claim on behalf of MFGI because the Insured versus Insured exclusion does not contain an exception for trustees. See *O'Melveny & Myers*, 512 U.S. 79, 85 (1994), where the United States Supreme Court held that when a financial institution is taken into receivership by

the FDIC, the FDIC “steps into the shoes” of the bank and thus “any defense good against the original party [would be] good against the receiver.” *See also St. Paul Mercury Ins. Co. v. Miller*, 968 F. Supp. 2d 1236 (N.D. Ga. 2013) holding that an insured v. insured exclusion providing that an insurer “shall not be liable for Loss on account of any Claim made against any Insured...brought by or on behalf of any Insured or Company in any capacity” must be upheld to bar a suit from the FDIC. The language in Section 3.9 of the Policies similarly provides that “the insurer shall not be liable...in respect of any claim under...this policy arising out of, based upon or attributable to any claim brought by or on behalf of an insured, or successors or assigns of any insured.” The role of the trustee in proceedings under Chapter 11 and a SIPA liquidation is analogous to that of the FDIC in FIRREA cases, thus exclusion 3.9 could similarly be upheld to preclude coverage. *See In re Cnty. Seat Stores, Inc.*, 280 B.R. 319 (Bankr. S.D.N.Y. 2002); *In re Bernard L. Madoff Inv. Sec. LLC.*, 721 F.3d 54, 58 (2d Cir. 2013).

Furthermore, Assurance continues to reserve all rights under the Policies, and specifically with respect to the below issues, pending developments in the MDL that should established facts such that Assurance will be better able to assess whether there are other provisions of the Policies that may further determine coverage.

We refer your attention to Section 1 of the Policies (i.e., the Insuring Agreement), which states:

The *insurer* shall pay on behalf of the *insured* for all *loss* arising out of a *wrongful act* which gives rise to a *claim* first made against an *insured* by a third party during the *policy period* (or discovery period, if applicable) and reported in writing to the *insurer* pursuant to the terms of this policy.

We further refer your attention to Section 2.32 of the Policies, which defines Wrongful Act as:

“any actual or alleged act, error or omission by the *insured*, or by any other person for whose act, error or omission the *insured* is legally responsible, arising out of the provision of, or failure to provide the *services*. For the avoidance of doubt, the term “act, error or omission” as used in the foregoing, shall include, but not be limited to any:

- (i) breach of duty, breach of trust (including, but not limited to, breach of constructive trust) breach of fiduciary duty, neglect, error, misstatement, misleading statement, misrepresentation, libel, slander, omission or breach of warranty of authority; or
- (ii) breach of any statute enacted anywhere in the world (including any statutory provisions and/or any rules or *regulations* made by any regulatory body or authority thereunder, and including any award of any referee, arbitrator, the Financial Services Ombudsman or any other ombudsman appointed by the Secretary of State for Trade and Industry or similar *regulator* or by any self-regulatory organization or by any recognized professional body by whose rules the *insured* is bound); or
- (iii) other breach of a duty to a third party which is actionable at law in tort, or actionable in delict or quasi-delict in respect of Scotland.”

Further, Section 2.27 of the Policies defines Services as:

“financial or professional services or other activities performed by the *insured*, or by any other person for whose act, error or omission the *insured* is legally responsible performed for customers or clients (or a prospective customer or client) of the *insured*, and shall include, but shall not be limited to, all administrative, back office or other operations (including,

but not limited to, technology functions) of the *insured entity* which support the provision of those services or activities.”

Therefore, in order to trigger the professional liability coverage provided by the Policies, a Claim must arise out of the provision of or failure to provide Services, a term which, by definition, pertains to certain services or activities performed for customers or clients of the Insured. Based on the facts adduced to date, it is questionable as to whether the alleged actions or failures of Insureds pertained to Services. Notably, in their motion to dismiss the Consolidated Complaint, the Individual Insureds argued:

The Complaint itself alleges merely that the D&O Defendants misused customer funds and property to meet MF Global’s increasing liquidity demands. See Compl. ¶5. This is indisputably a corporate purpose...

Further, as detailed above, your client’s report and the CFTC complaint that he consented to settle make abundantly clear that MFGI’s collapse was the result of managerial actions and inactions rather than a failure to provide Services.

We refer your attention to Section 3.14 of the Policies, entitled Business Risk, which provides there is no coverage for any Claim:

“arising out of, based upon or attributable to:

- (i) the internal administration or operation of the business of the *insured entity* other than in connection with the provision by the *insured* of services;
- (ii) any liability under a contract of insurance or reinsurance to pay benefits or indemnity due to an *insured entity’s* capacity as an insurer or reinsurer of such contract;
- (iii) any costs, payments or expenses or damage made or incurred by an *insured entity* prior to a matter becoming a *claim* including all costs, payments, expenses or damage associated with such matters, other than *defense costs* and fees, costs, expenses, loss and damage which are covered by Extension 4.4;
- (iv) (a) merger and acquisition activity; or (b) purchase or sales transactions in the *securities* of the *insured entity*, by the *insured entity* on its own behalf;”

Your client’s report and the CFTC complaint also indicate that the Business Risk exclusion may apply, which should be more fully revealed as the MDL develops.

We finally refer your attention to Section 3.13 of the Policies, entitled Wrongdoing, which provides there is no coverage for any Claim:

“alleging, arising out of, based upon, or attributable to:

- (i) the gaining of any profit or advantage to which the *insured* is not legally entitled; or
- (ii) the deliberate commission of any *wrongful act* by any *insured*; or

- (iii) an *insured's* actual or attempted commission, aiding, abetting, counseling, procuring, inciting, participation in or conniving at any criminal, dishonest, fraudulent or malicious act; or
- (iv) any knowing or willful violation of any law or regulation binding on an *insured*,

provided that this exclusion shall only apply to the *insured* against whom it is established by an admission, court judgment or other final adjudication in the underlying *claim* that the subject conduct did in fact occur, provided that the court of adjudication is compelled to find whether the *insured's* act, error or omission was illegal, deliberate, criminal, dishonest, fraudulent malicious or willful;"

To the extent that there is a final adjudication or an admission that affirms any such allegation in the MDL, this exclusion may fully preclude coverage. We observe that any and all of the prongs in the Wrongdoing exclusion may cause it to apply in this matter, but especially that "the gaining of any profit or advantage to which the insured is not legally entitled" may preclude coverage in this matter. We take particular note of the thrust of the allegations in the complaints and the investigatory findings that MFGI improperly transferred funds from its customers' segregated accounts in order to further its proprietary trading.

Assurance reserves the right to supplement and/or amend this letter to address additional coverage issues as they may arise, based upon all the provisions, terms, conditions, exclusions, endorsements and definitions found in the Policies and additional facts that may come to Assurance's attention. Any additional information that you provide will also be considered. Nothing stated herein and no further action taken by Assurance or on its behalf should be construed as a waiver of any of Assurance's rights under the Policies. On the contrary, by authorizing this or any prior correspondence to you or your representatives, engaging in any prior or future discussions with you or your representatives, or paying or agreeing to pay any amount to or on or behalf of you or your representatives, Assurance does not waive any rights that it has under the Policy at law or in equity.

Very truly yours,

A handwritten signature in black ink, appearing to be 'MJ' or similar, with a long horizontal line extending to the right.

cc: Michael P. Fried (LVL Claims Services LLC)

Exhibit H

JONES DAY

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October 24, 2015

VIA E-MAIL MFRIED@LVLCLAIMS.COM

Michael P. Fried
Assistant Vice President
LVL Claims Services LLC
30 Broad Street, 28th Floor
New York, NY 10004

Re: Insureds: MF Global, Inc. and MF Global Holdings Ltd.
Insurers: MFG Assurance Company Ltd. (“MFGA”)
Policy No.: 1-18001-00-11
Matter: Customer Claims Against MF Global, Inc.

Dear Mr. Fried:

As you know, we represent MF Global Holdings Ltd. (“MFGH”), as Plan Administrator under the confirmed plan of liquidation in the chapter 11 cases of MFGH and certain of its affiliates. We advised you by letter on September 18, 2015, that pursuant to the August 18 “Sale and Assumption Agreement” by and between James W. Giddens, as the Trustee under the Securities Investor Protection Act (the “SIPA Trustee”) for MF Global, Inc. (“MFGI”), and MFGH, the SIPA Trustee had assigned all of MFGI’s rights, remedies, title and interests arising from or related to the MDL proceedings,¹ the SIPA Trustee’s prior proof of loss on behalf of MFGI, and proofs of claims against MFGI by its former commodity customers. The assigned rights were placed with MFGAA for which MFGH serves as managing member (MFGH, MFGI and MFGAA collectively referred to herein as “MF Global”).

We send this correspondence with the authority and at the request of MF Global and the MF Global entities insured under MFGA Primary Professional Liability Insurance Policy Number 1-18001-00-11 (the “MFGA Policy”) and the related 2011-12 excess policies providing a total of \$150 million in excess professional liability (“E&O”) coverage. Specifically, we write on behalf of MFGH as “policyholder” (and formerly as the largest general creditor of the MFGI

¹ With respect to the MDL, MF Global Assigned Assets LLC (“MFGAA”) has now stepped into MFGI’s shoes with respect to certain claims asserted in the *Commodity Customer Class Action* pending in the United States District Court, MDL Case No. 11-CIV-7866 (VM), which include any recoveries by the customer representatives for the amounts advanced by the MFGI estates to pay the customers’ net equity claims (the “Customer MDL Claims”). See Letter to the Honorable Victor Marrero from Jane Rue Wittstein dated September 11, 2015, with Exhibits (MDL Docket No. 996).

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estate), and on behalf of MFGAA, which has now stepped into MFGI's rights as an "insured entity" ("MFGAA-MFGI"), and MFGAA as the assignee of any rights of recovery, whether direct or indirect, under the MFGA Policy and excess policies.

The SIPA Trustee also assigned to MFGAA the claims of MFGI's former commodity customers against MFGI and other insureds alleging various breaches of duties, acts of wrongdoing, and failures in connection with the segregation and protection of customer assets (collectively, the "Customer Claims"). As used herein, the Customer Claims include without limitation: (i) the Customer MDL Claims (*see* footnote 1), (ii) a proof of claim filed against MFGI by its former customers in the Securities Investor Protection Act ("SIPA") bankruptcy case number 11-2790 (MG) (SIPA) (amended June 4, 2012) and all related filings (the "Proof of Claim"), and (iii) over 28,000 claims filed by the former customers of MFGI in the SIPA bankruptcy proceeding seeking the return of assets that were missing as a result of the shortfall in customer property ("Individual Customer Claims").²

By this letter, MF Global hereby demands coverage and repeats the SIPA Trustee's previous demand expressed in his May 5, 2014 letter, that MFGA, the other E&O excess insurers participating in the 2011-12 coverage program, and, if necessary, MFGA's reinsurers immediately reimburse MFGAA-MFGI to the full amount of the remaining limits under the E&O coverage program, less only those sums properly paid to or on behalf of individual insureds named as defendants in the MDL proceedings. Specifically, this letter is a direct communication to and demand for a full remaining limits payout, which we believe to be at least \$143 million under the aforementioned policies (the "E&O Policies"), upon: (a) MFGA, as issuer of the MFGA primary and excess policies covering the first \$127.475 million of loss above a \$25,000 self-insured retention, (b) the other direct excess insurers – namely, Allied World Assurance Company, Ironshore Insurance Ltd. ("Ironshore"), Starr Insurance and Reinsurance Ltd. ("Starr")³ and Federal Insurance Company ((a) and (b) collectively, the "E&O Insurers") – who insure the upper layers comprising \$30 million (excess \$127.475 million) of the E&O coverage program limits purchased by MFGH, and (c) MFGA's reinsurers with respect to the E&O excess

² As discussed below, the Proof of Claim and Individual Customer Claims were the subject of various proceedings in the Bankruptcy Court, and provided the basis for the payment by MFGI of the customers' net equity claims and settlement with the U.S. Commodity Futures Trading Commission ("CFTC"), which in turn were the subject of agreements and assignments which MFGAA has stepped into with respect to amounts owed back to MFGAA-MFGI from the Customer MDL recoveries; the remaining claims of the customers against MFGI for amounts in excess of the customers' net equity claims were subordinated, and pursuant to the Court's Order approving the Sale and Assumption Agreement, are expected to receive no distribution from the MFGI estate.

³ Iron-Starr Excess Agency Ltd. ("Iron-Starr") issued a direct excess policy for and on behalf of Ironshore and Starr as subscribing insurers in a quota share arrangement. Our demand for coverage is addressed to Iron-Starr as well as issuer of the policy.

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policies issued by MFGA (the “Reinsurers”).⁴ For the reasons stated herein and in our and the SIPA Trustee’s prior correspondence, anything short of a full and immediate payment of the E&O Insurers’ remaining policy limits, in no event less than \$143 million to MF Global, constitutes a breach of the coverage obligation expressed in the MFGA Policy.

There is no good faith justification for MFGA, the E&O Insurers or the Reinsurers to delay further their payment of the remaining limits under their policies and corresponding certificates of reinsurance. At a minimum, MFGAA-MFGI and MFGH as your insureds (or their assignees) are entitled to an immediate, unqualified statement by those Insurers that they are denying coverage and refusing to pay, and the specific basis for that denial. Thus, this letter supplements and expands on the SIPA Trustee’s May 5, 2014 demand letter which previously demonstrated that MFGA’s coverage obligation to MFGI as an insured entity was then long overdue and had been disregarded without any legal or policy justification.

As detailed in the SIPA Trustee’s demand letter, the Bankruptcy Court specifically recognized and determined that a \$548.4 million shortfall existed in customer assets available to satisfy the net equity claims of MFGI’s former customers stemming from the collapse of MF Global and the wrongful acts described in the Proof of Claim (and by the Customer Claims in general). The SIPA Trustee was clear in his letter that the \$548.4 million shortfall in customer funds dwarfed the remaining E&O coverage program limits and thus required the full application of those limits to satisfy MFGI’s losses. In addition, expert reports submitted in the MDL proceedings have yet again confirmed the magnitude of the commodity customers’ losses, determining the balance of the customer funds shortfall to stand currently at \$484 million in light of further recoveries obtained by MFGI’s customer fund estates. Thus, when MFGI previously demanded coverage in its letter, MFGA already had before it a covered insurance claim arising from MFGI’s legal obligation to pay the claims of its former customers. At that time, the SIPA Trustee had provided more than enough information to confirm the amount of coverage owed by the E&O Insurers and the Reinsurers if MFGA was unable to pay. In light of these facts, MFGA’s repeated and continued refusal to provide a coverage determination, as demonstrated by your May 7, 2014 letter (the “May 7 MFGA Letter”) and in Mr. Doody’s July 25, 2014 letter (the “July 25 MFGA Letter”), reflects a breach of MFGA’s coverage obligation under the MFGA Policies’ insuring agreement.

⁴ We invite the Reinsurers to respond to the points raised herein, as we believe the facts and circumstances surrounding MFGAA-MFGI’s insurance claim may require a significant financial commitment from all the foregoing parties. This specifically includes the availability of reinsurance funds if and to the extent that MFGA cannot meet its direct coverage obligations to MFGAA-MFGI in connection with the Customer Claims.

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MFGA has a duty to cover MFGI's loss, which well exceeds the program limits, without further delay or, assuming it believes it has a good faith basis to deny the claim based on all available information, to deny coverage on a clear, articulated basis. To date, no action has been taken and no insurer payment has been forthcoming despite the multiple developments and rulings in the SIPA liquidation detailed below that show that the SIPA Trustee's claim was ripe under the E&O policy as least as early as May 2014. Specifically, the July 25 MFGA Letter, which reiterated MFGA's reservation of rights and cited several potential coverage defenses in an apparent attempt to legitimize MFGA's wrongful refusal to provide coverage, is indicative of the dilatory approach adopted by the Insurers to avoid their obligations under the MFGA Policy's terms and conditions. We disagree with MFGA's refusal to cover and the erroneous grounds it is based on.

Thus, as the SIPA Trustee stated on May 5, 2014, and we state now, the MF Global entities repeat the demand for full payment of the remaining policy limits from MFGA and the other E&O Insurers (and/or MFGA's Reinsurers if MFGA cannot meet its coverage obligation). Again, we understand this amount to be no less than \$143 million.⁵ MFGA's prompt response to this letter will determine our next steps in vindicating MFGAA-MFGI rights under the MFGA Policy. Thus, we request that MFGA (and each of its Reinsurers) and the other excess E&O Insurers either (1) agree to cover up to the remaining policy limits the full amount of the loss suffered by MFGI's former customers as established by the Bankruptcy Court, or (2) provide a clearly worded coverage position letter stating why each is denying coverage for this loss. After over three-and-a-half years of reservations and delays, we fairly view any additional delay or reservation of rights as a declination of coverage.

A. Background of the Claim

To put to rest any doubt that MFGA has wrongfully failed to determine MFGAA-MFGI's claim, a brief history of the insurance claim is instructive. On March 28, 2012, the SIPA Trustee reported the existence of claims alleging wrongdoing by MFGI and its senior executives, including "over 28,000 customer claims against MFGI" arising from the loss of funds in commodities customers' accounts maintained by MFGI. On June 4, 2014, the amended Proof of Claim was filed in the SIPA bankruptcy proceeding against MFGI by the representatives of MFGI's former customers. The Proof of Claim alleged wrongful acts committed by MFGI and its senior executives against its customers' interests, including without limitation: (i) the failure to properly segregate customer assets, (ii) the improper transfer of customer assets to satisfy proprietary obligations, (iii) the failure to install proper safeguards and procedures to protect customer accounts, and (iv) other breaches of duties in connection with customer funds and

⁵ We are not privy to the actual payments allegedly made as impairments against policy limits. Before accepting a final payout represented to be "remaining limits," you will need to verify your prior disbursements of proceeds which support the final tally of the coverage owed for MFGAA-MFGI's claim.

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accounts. To date, MFGA has provided no final coverage determination under its policies. Instead, in response to the SIPA Trustee's demands, MFGA has sent a string of reservation of rights communications in which MFGA refused to take a definite position on whether coverage was either owed or potentially owed.

After the SIPA Trustee provided notice of the claims asserted by MFGI's former customers, various actions were filed against the former senior executives of MF Global in the District Court for the Southern District of New York (the "MDL Customer Lawsuit").⁶ The MDL Customer Lawsuit reiterated the allegations of wrongdoing against MFGI's senior executives and directors first presented in the Proof of Claim. The CFTC also brought an action against MFGI and others, alleging that the failure to segregate customer funds from other corporate uses violated the Commodity Exchange Act and damaged MFGI's customers' financial interests. In connection with the CFTC action, the CFTC prepared a Consent Order to resolve claims against MFGI. At the request of the Bankruptcy Court and after lengthy discussion and correspondence, MFGA stated in its August 26, 2014 letter (and clarified in your subsequent emails on August 27 and August 28) that it agreed that the SIPA Trustee's entry into the Consent Order would not be an independent basis to deny coverage for any of the claims submitted by the SIPA Trustee under the E&O Policies. Only after these representations were made did the Bankruptcy Court authorize the SIPA Trustee's entry into the Consent Order on September 12, 2014. The Consent Order was approved by the District Court on November 8, 2014.

On October 2, 2013, the SIPA Trustee moved the Bankruptcy Court to (i) confirm the size of the shortfall in customer property, and (ii) authorize payment from the general estate of sufficient assets to allow a 100-percent distribution on customer net equity claims. On November 5, 2014, the Bankruptcy Court entered an order approving the SIPA Trustee request (the "Allocation Order").⁷ The Allocation Order acknowledged the damages to customers resulting from MFGI's failure to protect customer funds and accounts, finding that the shortfall in customer property was \$560 million.⁸

Frustrated by MFGA's continued delay in providing coverage, on May 5, 2014, the SIPA Trustee asked MFGA (and the direct excess insurers above MFGA) to tender the remaining limits of the E&O coverage program to partially reimburse the loss suffered by MFGI (and now

⁶ As discussed above, it is a subset of the claims asserted in the MDL Customer Lawsuit which represent the Customer MDL Claims assigned through a series of Court-approved agreements to MFGAA.

⁷ MFGA formally appeared at the court hearings and proceedings throughout the process resulting in the Allocation Order and its final approval and was on notice of MFGI's estate's customer payment, but made no objection.

⁸ The customer shortfall was later reduced by the SIPA Trustee's settlement with the Chicago Mercantile Exchange and in connection with other marshalling efforts and payments.

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MFGAA as its assignee) as a result of MFGI's obligation to pay former customers the amount of the shortfall. MFGA responded on May 7 and July 25, 2014 with the same non-committal reservation of rights and refusal to tender the remaining policy limits to cover the loss related to the Customer Claims.

Most distressing, while MFGAA-MFGI's insurance claim has essentially been kept on hold by inaction, MFGA and the other E&O Insurers continued (and still continue) to advance (or seek to advance) defense costs to the individual insureds responding to the MDL Customer Lawsuit. We recognize that MFGA has responded to the individual defendants' request to advance defense costs prior to a final adjudication in the MDL Customer Lawsuit. Nevertheless and for reasons not clearly explained in the July 25 MFGA Letter or in MFGA's prior communications, MFGAA-MFGI's separate insurance claim has not been afforded equal priority under the MFGA Policy. As you are well aware, the MFGA Policy does not contain a "priority of payments" provision or any other legal justification to treat MFGAA-MFGI's demand for entity coverage with less seriousness and urgency than the losses claimed by those individual defendants. Yet MFGA continues to advance defense funds to MF Global's former directors and officers to the detriment of MFGAA-MFGI as the E&O coverage program's limits continue to erode. Moreover, contrary to your assertions before Judge Glenn at the December 17, 2014 hearing regarding the "soft cap" allocation of E&O insurance proceeds, there appears to be no express mechanism in the MFGA Policy to require those individual defendants to return payments to MFGA for later distribution to MFGAA-MFGI, other than a final judgment in the MDL Customer Lawsuit with a specific finding of egregious wrongdoing. Thus, each dollar paid by MFGA in choosing other insureds' financial interests above MFGAA-MFGI's insurance claim (as briefly discussed herein) deprives MFGAA-MFGI of a dollar of available E&O coverage, and shows a lack of good faith and fair dealing by the E&O Insurers towards MFGAA-MFGI as their insured (or its assignee).

To date, MFGA has hidden behind a "wait and see" approach, contending that then-MFGI's right to recover could not be established until further underlying proceedings took place in the MDL Customer Lawsuit – even though the MDL litigation is pending against MF Global's former officers and directors and *not* MFGI itself. MFGA's contention that MFGAA-MFGI's insurance claim is in essence not "ripe" for determination is patently incorrect because it disregards the fact that the claims asserted by MFGI's former customers directly against MFGI, and the loss directly incurred by MFGI's estate as a result, are *separate and distinct* from any claim for coverage that the individual insureds may seek in connection with the claims against them in the MDL.

In sum, MFGAA-MFGI has asserted a completely separate insurance claim, which squarely satisfies all of the conditions for direct coverage of the loss to MFGI (and its assignee), independent of any coverage claim that the individual defendants may submit under the same

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E&O coverage program. We agree with the SIPA Trustee's prior assessment of MFGI's insurance claim and now advocate for its payment under the E&O policies to MFGAA-MFGI based on the assignment of MFGI's rights against the E&O Insurers (and Reinsurers).

B. The SIPA Trustee Has a Separate and Distinct Claim Under the E&O Policies Independent of Individual Defendants' Claim Arising out of the MDL

As your counsel informed Judge Glenn, once the SIPA Trustee could establish the elements of MFGAA-MFGI's insurance claim, MFGAA-MFGI may recover its loss *before* any settlement or judgment resolving the MDL against the individual defendants. In fact, MFGA acknowledged the independence of MFGI's (now MFGAA-MFGI's) insurance claim several times during a hearing before the Bankruptcy Court. *Hr'g Tr.* 35-36, 46-47, Dec. 17, 2014. On the record, MFGA's counsel agreed that if MFGAA-MFGI establishes the basis of its insurance claim, MFGA must cover the loss without further delay and without waiting for the outcome of the MDL. MFGAA-MFGI's right to recovery has been fully established under the terms and conditions of the MFGA Policy (and the direct excess policies, which follow form, and the reinsurance certificates that reinsure those policies issued by MFGA).

Section 1 of the MFGA Policy imposes a straightforward and broad coverage obligation on MFGA and the other direct excess insurers participating in the E&O coverage program for timely reported "*claims*":

The *insurer* shall pay on behalf of the *insured*⁹ for all *loss* arising out of a *wrongful act* which gives rise to a *claim* first made against an *insured* by a third party during the *policy period*.¹⁰

The information and supporting material contained in MFGI's prior correspondence and herein meet all of the elements for coverage under the MFGA Policy, because MFGI's former customers asserted claims against MFGI in the SIPA proceeding (*claims* first made against an *Insured* by a third party) seeking to recover the damages to their property determined by the shortfall amount (*loss*) arising from MFGI's failure as a company to properly segregate customer assets (a *wrongful act*).

The Customer Claims constitute a "*claim*" as defined by the MFGA Policy. The MFGA Policy's definition of "*claim*" includes "any written demand from any person or entity seeking

⁹ It is undisputed that MFGH and MFGI are "*insureds*" as defined in section 2.15 of the MFGA Policy.

¹⁰ Italicized terms referred to herein are uniquely defined in the MFGA Policy and may not be interpreted using their ordinary meanings. The MFGA Policy's key definitions are more expansively worded than other professional liability policy forms available on the marketplace, across the board expanding the scope of coverage owed to MF Global.

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monetary damages or other relief, from an insured for the results of any specified *wrongful act*.” The Proof of Claim, and its attached “Amended Statement of Claim,” filed by the Customer Claimants against MFGI in the SIPA Proceeding, as well as the 28,000 individual claims, clearly comprised a *claim* asserting a written demand seeking monetary damages based on a *wrongful act* – namely, MFGI’s failure to properly segregate customer funds. Specifically, the Proof of Claim (separate and apart from what is pled in the MDL Customer Lawsuit) alleges that MFGI failed “to segregate and separately maintain MFGI’s commodity customers’ property,” allowed the use of customer segregated funds for improper purposes, and failed to implement “internal safeguard policies” to protect customer funds. *Proof of Claim* at 28-42.¹¹

The Bankruptcy Court’s determination of the shortfall in customer property constitutes a “loss” as defined by the MFGA Policy. The MFGA Policy defines “loss” to include “damages” (arising out of the *wrongful act*). As previously stated, the Proof of Claim seeks “monetary damages” in an amount equal to the shortfall in customer assets available to satisfy the net equity claims of MFGI’s former customers. Further, the amount of this *loss* has been quantified by the Allocation Order which specifically found that the shortfall in customer property was ultimately \$548.4 million (and has been subsequently decreased by estate recoveries to \$484 million) and authorized payment by the SIPA Trustee. The MFGA Policy’s definition of “loss” is exceptionally broad, covering damages, aggravated damages, judgments, settlements, restitution orders of a compensatory nature and other forms of relief.

Finally, the failure of MF Global to properly segregate customer assets constitutes a “*wrongful act*” as defined by the MFGA Policy. The term “*wrongful act*” is defined as “any actual or alleged act, error or omission by the *insured*, or by any other person for whose act, error or omission the *insured* is legally responsible, arising out of the provision of, or failure to provide the *services*.” Further, “*wrongful act*” is defined to include “any breach of any statute enacted anywhere in the world (including any statutory provision and/or any rules or regulations made by any regulatory body or authority).”

It cannot now be seriously debated that numerous rules, regulations and statutes, as well as numerous other duties and obligations owed to customers, were violated by the failure to properly segregate and separately maintain MFGI’s commodity customers’ property, by improperly using customer funds, and by failing to implement appropriate safeguards to protect customer property. The SIPA Trustee’s Investigation Report (as defined in footnote 12)

¹¹ In addition, the MDL Customer Lawsuit also describes institutional-level misconduct allegedly committed by MF Global senior executives. For example, paragraph 53 of the underlying complaint alleges the former directors and officers of MF Global “directed, caused, authorized and/or allowed MFG Holdings and MFGI improperly to transfer funds that MFGI was required to segregate on behalf of customers for the companies’ own use, and failed to ensure that adequate steps were being taken to secure property sufficient to satisfy MFGI’s obligations to . . . Commodity Customers”

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previously provided to MFGA, the independent investigations of the MFGH Chapter 11 Bankruptcy Trustee, the customer representatives, the CFTC, and the United States Congressional Committee on Financial Services,¹² all concluded that the failure to segregate customer funds violated rules and regulations regarding segregation (in addition to other various errors and omissions made by the senior executives of MFGI). The Allocation Order recognized those failures in connection with customer funds and accounts and, by virtue of the court's ruling authorizing payment to the customers, there can be no serious debate that a shortfall in customer assets existed on October 31, 2011, when the SIPA Proceeding was commenced. Additionally, there is no question that the sheer fact of this shortfall demonstrates that *wrongful acts* under the MFGA Policy led to MFGI's customer payment. Thus, MFGAA-MFGI has demonstrated its entitlement to coverage for the Customer Claims.

With all components of the MFGA Policy's insuring agreement satisfied, MFGAA-MFGI's insurance claim must be paid in full without further delay. As discussed below, the MFGA Policy's other terms and conditions quite clearly do not defeat coverage. Contrary to the assertion in the July 25 MFGA Letter, MFGA (and its Reinsurers) and the other excess E&O Insurers have before them a "ripe" insurance claim and have an immediate obligation to tender the remaining proceeds of the policies to MF Global (specifically MFGAA) on behalf of MFGAA-MFGI.

C. The Potential Defenses Raised by MFGA Are Inapplicable to MFGAA-MFGI's Claim

The July 25 MFGA Letter raises a series of potential coverage defenses which MFGA asserts it could rely upon to bar coverage if the SIPA Trustee had sought an immediate coverage determination. Specifically: (i) MFGA believes the claim seeks coverage for uninsurable restitution or disgorgement of funds; (ii) MFGA believes that MFGAA-MFGI's claim triggers

¹². This Revised Proof of Loss incorporates the Report of the SIPA Trustee's Investigation dated June 4, 2012 (the "Investigation Report," ECF No. 1865); the SIPA Trustee's First Six Month Interim Report for the Period October 31, 2011 through June 3, 2012 (ECF No. 1864); the SIPA Trustee's Second Six Month Interim Report for the Period June 5, 2012 through December 4, 2012 (ECF No. 4763); the SIPA Trustee's Third Six Month Interim Report for the Period December 5, 2012 through June 4, 2013 (ECF No. 6548); the SIPA Trustee's Fourth Six Month Interim Report for the Period of June 5, 2013 Through December 4, 2013 (ECF, No. 7314); the Consolidated Amended Class Action Complaint for Violations of the Commodity Exchange Act and Common Law, *DeAngelis v. Corzine*, No. 11-Civ-7866 (VM) (S.D.N.Y. Aug. 20, 2012); the First Amended Complaint and Demand for Jury Trial, *In re MF Global Holdings Ltd.*, No. 11-15059 (MG), Adv. Pro. No. 13-01333 (MG) (Bankr. S.D.N.Y. April 4, 2013); the Complaint for Injunctive and other Equitable Relief and for Civil Monetary Penalties Under the Commodity Exchange Act, *U.S. Commodity Futures Trading Commission v. MF Global Inc.*, No. 13-0446, ECF No. 1; and the SIPA Trustee's Allocation Motion to (I) Approve the SIPA Trustee's Allocation of Property and (II) Approve the Terms of an Advance of General Estate Property for the Purpose of Making a Final 100% Distribution to Former Commodity Futures Customers of MF Global Inc. (ECF No. 7103) and the supporting declaration of Josiah S. Trager (ECF No. 7104).

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the “insured-versus-insured” exclusion because the SIPA Trustee “present[ed]” a claim “on behalf of an Insured” – *i.e.*, MFGI; (iii) MFGA believes that coverage is precluded because the claim does not arise out of the provision of or failure to provide “*services*” as defined by the Policy; and (iv) MFGA believes that the claim triggers the “business risk” exclusion under the Policy.

The July 25 MFGA Letter posits that MFGAA-MFGI cannot seek coverage for the loss arising from the shortfall because any such payment would be on account of the disgorgement of improperly acquired funds or a restitution payment and thus a violation of the public policy of New York. However, this argument is based on a faulty factual premise and incompatible with the actual definition of “*loss*” contained in the MFGA Policy. First, as noted in the cases cited in the July 25 MFGA Letter, the policy rationale for precluding indemnity for disgorgement arises when the “[i]nsured would retain the ill-gotten gains by transferring the loss to its carrier.” Here, MFGAA-MFGI is not retaining and has not retained any ill-gotten gains. Rather, customer property was improvidently transferred *to third parties* to stave off MF Global’s financial collapse caused by the liquidity crisis, and MFGI did not retain the improperly transferred customer property within the firm. Thus, the current situation is similar to the circumstances in *J.P. Morgan Securities Inc. v. Vigilant Ins. Co.*, 21 N.Y.3d 324, 992 N.E.2d 1076 (2013), where the New York Court of Appeals held that disgorgement did not arise when the misconduct allowed third parties to profit (here, MFGI’s financial counterparties). MFGA’s statement that “all amounts repaid to customers are disgorgement and restitution of funds” and “therefore uninsurable” is overbroad, disregards New York law, and is completely at odds with the clear intent of the MFGA Policy’s insuring agreements and definitions. Plainly, the MFGA Policy protects MFGI from third-party liability claims by customers for financial losses. MFGA’s reading of the Policy would lead to the absurd result that neither MFGI nor its customers were protected by the E&O Insurers for any losses with respect to customer assets held by MFGI.

Similarly, the argument contained in the July 25 MFGA Letter asserting that the obligation arising from the shortfall in customer assets is not a *loss* because it constitutes a payment in the “nature of restitution” is inconsistent with the terms of the MFGA Policy and is barred by MFGA’s prior representations. First, MFGA’s argument that claims based on the restitution of funds are not covered by the policy is inconsistent with the definition of “*loss*” in the MFGA Policy, which specifically includes not only “damages” but also “restitution orders of a compensatory nature.” The July 25 MFGA Letter also fails to provide any explanation why any payment of the customers’ damages arising from the shortfall would not fit squarely within the definition of “*loss*.” The Policy contemplates paying such amounts to customers and the

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Allocation Order determined the SIPA Trustee's customer payment in connection with the shortfall.¹³

MFGA's argument that the claim triggers the "insured-versus-insured" exclusion is also premised on a fundamental misunderstanding of the nature of the claims asserted by the SIPA Trustee. As detailed herein, MF Global asserts MFGI's contractual rights as an "*insured entity*" under the MFGA Policy in responding to the Customer Claims against MFGI. The insured-versus-insured exclusion only bars claims brought by an *insured* against an *insured* and is clearly not applicable in the instant case where MFGI (first through the SIPA Trustee and now through MFGAA as the SIPA Trustee's assignee) responds to claims brought by third-party customers producing a loss paid by MFGI's general estate. Your extensive treatment of the exclusion in your July 25 letter is unwarranted, since the insured-versus-insured exclusion plainly does not apply to claims brought by third-party customers against MFGI itself as an *insured entity*.

With respect to the definition of "*services*" and the "business risk" exclusion, the Proof of Claim clearly alleged that MFGI's employees negligently provided or failed to provide "*services*" as that term is defined in the MFGA Policy (*i.e.* committed an act, error or omission while providing services). MFGI's breaches of duties owed to customers and its management's failure to protect, segregate and maintain customer funds and accounts on record with MFGI fit the broad definition of "*services*," which includes without limitation any financial, professional and other business activities in relation to customers. There is no reasonable basis to suggest that the segregation and preservation of customer assets, the most fundamental obligation of a Futures Commission Merchant, do not constitute "a financial or professional service or other activity performed by the Insured." Moreover, a narrow reading of the "business risk" exclusion (as required under the law) will not bar coverage when MF Global's failure to render services has an ancillary connection to the company's business operations. Stated differently, the exclusion has an express carve-out requiring coverage for *services* notwithstanding a connection to the administration of MFGI's business.¹⁴

¹³ Further, your August 28, 2014 email specifically states that "MFGA agreed not to use the [CFTC Consent Order] as a basis to deny coverage." In light of the SIPA Trustee's reliance on these statements, MFGA cannot now argue that coverage for the Customer Claims is barred because of the Consent Order or any terms used therein.

¹⁴ In addition, the exclusion will not prevent coverage for any damages recovered in the MDL Customer Lawsuit against the Individual Defendants once transferred to the SIPA Trustee by virtue of various assignment agreements. Among other reasons supporting coverage, the "insured-versus-insured" exclusion has an express carve-out for any "cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from a *claim* that is covered by this policy." *MFGA Policy* § 3.9(c). Any liability established against the defendants in the MDL Customer Lawsuit which results in damages paid to the underlying customer claimants will at the very least constitute a "claim of contribution" held by MFGAA-MFGI.

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MFGA has referred to other coverage defenses in the past which may, in its judgment, bar coverage under the MFGA Policy. MF Global reserves the right to refute any other asserted coverage defense at the appropriate time. We remain confident that MFGA has wrongfully refused to cover the MFGAA-MFGI insurance claim in light of the indisputable fact that a *claim* had been asserted against an *insured entity* seeking recovery of a Court-determined *loss* arising from MFGI's *wrongful act*. The nature of the claim and the substantial, limits-exhausting amount of *loss* here leave no question that MFGA (and the other E&O Insurers and Reinsurers) must pay the remaining E&O program limits to resolve this matter. Any continued failure to pay demonstrates a lack of good faith shown by MF Global's insurers in response to this matter.

MF Global (as defined herein) continues to reserve all rights under the MFGA Policy, the excess policies issued by MFGA, and the other direct excess policies attaching above those MFGA policies, at law or in equity. We also reserve all rights to seek coverage directly from MFGA's reinsurers based on any reinsurance certificates issued to MFGA covering loss payments to MFGA's insureds. Please note this correspondence incorporates all of the SIPA Trustee's previous communications on behalf of MFGI in his oversight of MFGI's estate. Nothing herein or in our prior communications should be construed as a waiver, surrender or relinquishment of any right, privilege, protection, immunity or benefit conferred by the MFGA Policy to MF Global.

We hope you will revisit the position expressed in the July 25 MFGA Letter and agree to tender the remaining limits of the MFGA Policies without further delay. Because of the magnitude of the loss here, we also expect the E&O Insurers and Reinsurers to follow suit and release the necessary funds to effect a full remaining limits payment from the E&O coverage program. We desire an amicable solution to this coverage dispute, which has persisted for far too long. Nevertheless, MF Global reserves the right to pursue coverage using all available options, including but not limited to seeking a judicial declaration of rights under the MFGA Policy with respect to the Court-determined loss and asserting any related legal theory against the E&O Insurers and Reinsurers for their conduct in connection with MFGAA-MFGI's insurance claim.

We look forward to your prompt response.

Very truly yours,

David W. Steuber

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cc (via email):

Laurie R. Ferber (lferber@mfglobalholdings.com)
Bruce Bennett (bbennett@jonesday.com)
Jane Rue Wittstein (jruewittstein@jonesday.com)

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MF GLOBAL E&O COVERAGE PROGRAM DISTRIBUTION LIST

Carrier	Reinsurer	Limits	Attachment	Counsel
MF Global Assurance Company	None	\$7.475 million	\$25,000 retention	Mike Fried LVL Claims Services LLC 212-359-3948 mfried@lvlclaims.com Ken Coleman Allen & Overy LLP 212-610-6470 Stephen.Doody@AllenOvery.com
MF Global Assurance Company	Houston Casualty Company	\$15 million	\$7.5 million	Gary Dixon Leslie Ahari Meredith Werner Troutman Sanders LLP 202-662-2003 703-734-4322 202-662-2053 Gary.dixon@troutmansanders.com Leslie.ahari@troutmansanders.com Meredith.werner@troutmansanders.com Dennis McGoldrick
MF Global Assurance Company	XL Specialty Insurance Company	\$15 million	\$22.5 million	Gary Dixon Leslie Ahari Meredith Werner Troutman Sanders LLP 202-662-2003 703-734-4322 202-662-2053 Gary.dixon@troutmansanders.com Leslie.ahari@troutmansanders.com Meredith.werner@troutmansanders.com Patricia Melly

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Carrier	Reinsurer	Limits	Attachment	Counsel
MF Global Assurance Company	Catlin (UK)	\$10 million	\$37.5 million	Jim Skarzynski Jennifer Dowd George Mustes Boundas, Skarzynski, Walsh & Black, LLC 212- 820-7720 212-820-7734 jskarzynski@bswb.com
MF Global Assurance Company	Continental Casualty Company	\$5 million p/o \$10 million	\$47.5 million	David Philips CNA Pro Claim 212-440-3545 david.philips@cna.com
MF Global Assurance Company	Everest	\$5 million p/o \$10 million	\$47.5 million	Ned Kirk Allison Calkins Clyde & Co. 212-710-3900 edward.kirk@clydeco.us allison.calkins@clydeco.us Bernadette Dono

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Carrier	Reinsurer	Limits	Attachment	Counsel
MF Global Assurance Company	AXIS Insurance Company	\$10 million	\$57.5 million	Scott Schaffer Jonathan Meer Alicia Santocki Wilson Elser Moskowitz Edelman & Dicker LLP 212-915-5771 914-872-7503 scott.schaffer@wilsonelser.com jonathan.meer@wilsonelser.com alicia.santocki@wilsonelser.com Harold Neher
MF Global Assurance Company	ACE American Insurance Company	\$10 million	\$67.5 million	Ned Kirk Allison Calkins Clyde & Co. 212-710-3900 edward.kirk@clydeco.us allison.calkins@clydeco.us Victor Corbo
MF Global Assurance Company	Illinois National	\$10 million	\$77.5 million	Robert Benjamin Kaufman Borgeest & Ryan LLP 914-449-1059 rbenjamin@kbrlaw.com Stephen V. Caruso
MF Global Assurance Company	Ironshore Indemnity, Inc.	\$5 million	\$87.5 million	Mary Jo Barry Gavin Curley D'Amato & Lynch 212-909-2188 MJBarry@damato-lynch.com GCURLEY@damato-lynch.com

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Carrier	Reinsurer	Limits	Attachment	Counsel
MF Global Assurance Company	ACE Westchester	\$10 m p/o \$25 million	\$92.5 million	Ned Kirk Allison Calkins Clyde & Co. 212-710-3900 edward.kirk@clydeco.us allison.calkins@clydeco.us Victor Corbo
MF Global Assurance Company	New Hampshire Insurance	\$15 m p/o \$25 million	\$92.5 million	Robert Benjamin Kaufman Borgeest & Ryan LLP 914-449-1059 rbenjamin@kbrlaw.com Stephen V. Caruso
MF Global Assurance Company	AXIS Bermuda	\$10 million	\$117.5 million	Scott Schaffer Jonathan Meer Alicia Santocki Wilson Elser Moskowitz Edelman & Dicker LLP 212-915-5771 914-872-7503 scott.schaffer@wilsonelser.com jonathan.meer@wilsonelser.com alicia.santocki@wilsonelser.com
Federal Insurance Company	N/A	\$5 million	\$127.5 million	Tracy Tkac Assistant Vice-President Chubb & Son, Inc. 908-903-5468 ttkac@chubb.com

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Carrier	Reinsurer	Limits	Attachment	Counsel
Allied World	N/A	\$15 million	\$132.5 million	John McCarrick Maurice Pessó Daniel Simnowitz White and Williams LLP 914-487-7342 212-631-4405 212-714-3061 mccarrickj@whiteandwilliams.com pessom@whiteandwilliams.com simnowitzd@whiteandwilliams.com Jan Haylett Charmain Smith
Ironshore	N/A	\$5 million	\$147.5 million	Mary Jo Barry Gavin Curley D'Amato & Lynch 212-909-2188 MJBarry@damato-lynch.com G CURLEY@damato-lynch.com
Federal Insurance Company	N/A	\$5 million	\$152.5 million	Tracy Tkac Assistant Vice-President Chubb & Son, Inc. 908-903-5468 ttkac@chubb.com