

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

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

**STIPULATION AND ORDER BETWEEN THE CHAPTER 11 TRUSTEE AND NEW
YORK STATE DEPARTMENT OF TAXATION AND FINANCE FIXING AND
ALLOWING STATE SALES TAX CLAIM FOR THE PERIOD OF JUNE 1,
2009 THROUGH NOVEMBER 30, 2011 (PORTION OF CLAIM NUMBERS 1761 &
2038)**

This stipulation (the “**Stipulation**”) is entered into by and between Louis J. Freeh, as Chapter 11 Trustee (the “**Chapter 11 Trustee**”) of the Debtors (as defined below) and the New York State Department of Taxation and Finance (the “**NYSDTF**” and together with the Chapter 11 Trustee, the “**Parties**”), by and through their respective undersigned counsel. The Parties hereby stipulate as follows:

RECITALS

WHEREAS, on October 31, 2011, MF Global Holdings Ltd. (“**Holdings Ltd.**”) and MF Global Finance USA Inc. (“**FinCo**”) filed voluntary petitions for relief under Chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”);

WHEREAS, on December 19, 2011, MF Global Capital LLC (“**Capital**”) and MF Global FX Clear LLC (“**FX Clear**”) and MF Global Market Services LLC (“**Market Services**”)

filed voluntary petitions in the Bankruptcy Court for relief under chapter 11 of the Bankruptcy Code;

WHEREAS, on March 2, 2012 (the “**Holdings USA Petition Date**”), MF Global Holdings USA Inc. (“**Holdings USA**”, and collectively with Holdings Ltd., FinCo, Capital, FX Clear and Market Services, the “**Debtors**”) filed a voluntary petition in the Bankruptcy Court for relief under chapter 11 of the Bankruptcy Code;

WHEREAS, the Debtors’ cases (collectively, the “**Chapter 11 Cases**”) are being jointly administered pursuant to Federal Rule of Bankruptcy Procedure 1015(b);

WHEREAS, Louis J. Freeh, was appointed as the Chapter 11 Trustee of the Debtors;

WHEREAS, prior to the Holdings USA Petition Date, the NYSDTF commenced an audit of the Debtors with respect to certain New York State sales taxes for the period of March 1, 2009 through November 30, 2011 (the “**NYSDTF Audit**”);

WHEREAS, by order dated June 28, 2012, the Bankruptcy Court established August 29, 2012 as the bar date for governmental units holding claims against the Debtors;

WHEREAS, on March 22, 2013 the NYSDTF filed a fifth amended proof of claim (Claim No. 2038)¹ against Holdings USA, a copy of which is attached hereto as Exhibit A. Claim No. 2038 asserts, among other claims, two claims with respect to Sales Tax Notice Number X-164767534-1 for the period of June 1, 2009 through November 30, 2011: (1) an unsecured priority claim in the amount of \$4,475,289.18 for taxes and interest (the “**Holdings USA Tax Claim**”) and (2) a general unsecured claim in the amount of \$1,217,738.33 for penalties associated with nonpayment of the tax (the “**Holdings USA Penalty Claim**”).

¹ Claim no. 2038 amended (in whole or in part) the following claims that the NYSDTF previously filed against Holdings USA: claim no. 1760 filed on September 4, 2012; claim no. 447 filed on July 26, 2012; claim no. 209 filed on June 7, 2012; claim no. 192 filed on May 31, 2012; and claim no. 181 filed on May 6, 2012.

Together, the Holdings USA Tax Claim and the Holdings USA Penalty Claim total \$5,693,027.51 in asserted liabilities against the Holdings USA estate.

WHEREAS, on September 4, 2012, the NYSDTF filed a sixth amended proof of claim (Claim No. 1761)² against FinCo, a copy of which is attached hereto as Exhibit B. Claim No. 1761 asserts, among other claims, two claims that appear to be largely identical to the Holdings USA Tax Claim and the Holdings USA Penalty Claim, for Sales Tax Notice Number, X-164767534-1 for the period of June 1, 2009 through October 31, 2011: (1) an unsecured priority claim in the amount of \$4,475,289.18 for taxes and interest (the “**FinCo Tax Claim**”) and (2) a general unsecured claim in the amount of \$1,217,738.33, for penalties associated with nonpayment of the tax (the “**FinCo Penalty Claim**”). Together, the FinCo Tax Claim and the FinCo Penalty Claim total \$5,693,027.51 in asserted liabilities against the FinCo estate.

WHEREAS, after good faith, arms-length negotiations among the Parties, an agreement was reached with respect to the NYSDTF Audit, the Holdings USA Tax Claim, the Holdings USA Penalty Claim, the FinCo Tax Claim and the FinCo Penalty Claim, and all issues among the Parties with respect to these claims; and

NOW THEREFORE, upon consideration of the foregoing and mutual promises set forth below, the Parties agree as follows:

AGREEMENT

1. The recitals set forth above are incorporated herein by reference.
2. Upon the entry of a final order approving this Stipulation: (A) the Holdings USA Tax Claim shall be reduced and allowed as an unsecured priority claim pursuant to section

² Claim no. 1761 amended (in whole or in part) the following claims that the NYSDTF previously filed against FinCo: claim no. 446 filed on July 25, 2012; claim no. 208 filed on June 7, 2012; claim no. 207 filed on June 7, 2012; claim no. 159 filed on April 20, 2012; claim no. 155 filed on March 30, 2012; and claim no. 40 filed on December 27, 2011.

507(a)(8) of the Bankruptcy Code in the aggregate amount of \$73,664.06, consistent with the NYSDTF's Statement of Proposed Audit Change for Sales and Use Tax annexed hereto as Exhibit C; (B) the FinCo Tax Claim, the FinCo Penalty Claim, and the Holdings USA Penalty Claim shall be reduced to zero and withdrawn with prejudice; and (C) the NYSDTF waives its right to file a sales tax claim against any of the other Debtors with respect to the sales tax period of June 1, 2009 through November 30, 2011.

3. Except as specifically set forth in this Stipulation, nothing in this Stipulation nor any act performed or document executed pursuant to or in furtherance of this Stipulation is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim or right of any kind.

4. Nothing herein will impact the remaining claims filed by the NYSDTF against the Debtors in the Chapter 11 Cases for which all rights of the NYDTF and the Debtors are fully reserved.

5. This Stipulation shall be binding upon the Parties, the estates of the Debtors and any of their successors and assigns, including without limitation, any trustees or other estate or creditor representatives in the Chapter 11 Cases or any superseding cases under Chapter 7 of the Bankruptcy Code.

6. This Stipulation is subject to approval by the Bankruptcy Court. In the event that such approval is not obtained, the Parties reserve all rights and nothing contained herein shall be admissible for any purpose in any proceeding before any court or tribunal or deemed a waiver or release of same.

7. Each of the Parties shall bear its own costs and attorney's fees incurred in connection with this Stipulation.

8. Each of the Parties represents and warrants that it has full and requisite power and authority to execute, deliver and perform its obligations under this Stipulation.

9. This Stipulation shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of New York, and the rights and obligations of the Parties shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York without giving effect to that State's choice-of-law principles.

10. This Stipulation may be executed in any number of counterparts, and each such counterpart is to be deemed an original for all purposes, but all counterparts shall collectively constitute one agreement. Further, electronic signatures or transmissions of an originally signed document by facsimile or pdf shall be as fully binding on the Parties as an original document.

[Remainder of this page intentionally left blank]

11. The Bankruptcy Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Stipulation, and all Parties submit to the jurisdiction of the Bankruptcy Court for purposes of implementing and enforcing this Stipulation.

Dated: May 21, 2013
New York, New York

New York State Department of Taxation
and Finance

/S/ Enid Nagler Stuart
By: Enid Nagler Stuart
Assistant Attorney General

*Attorneys for New York State
Department of Taxation and Finance*

Dated: May 21, 2013
New York, New York

Morrison & Foerster LLP

/S/ Brett H. Miller
By: Brett H. Miller

1290 Avenue of Americas
New York, NY 10104-0050
Tel: (212) 468-8000

*Counsel for the Chapter 11 Trustee,
Louis J. Freeh*

SO ORDERED.

Dated: May 30, 2013
New York, New York

/s/Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge