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

In re

MF GLOBAL INC.,

Debtor.

Case No. 11-2790 (MG) SIPA

**NOTICE OF TRUSTEE'S MOTION FOR AN ORDER GRANTING  
AUTHORITY TO ISSUE SUBPOENAS FOR THE PRODUCTION OF DOCUMENTS  
AND THE EXAMINATION OF THE DEBTOR'S CURRENT AND FORMER  
OFFICERS, DIRECTORS AND EMPLOYEES, AND OTHER PERSONS**

**PLEASE TAKE NOTICE** that on November 3, 2011, James W. Giddens (the "Trustee"), as trustee for the liquidation of the business of MF Global Inc. ("Debtor" or "MFGI") under ") under the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. § 78aaa *et seq.*, by and through his undersigned counsel, filed a Motion for an Order Granting Authority to Issue Subpoenas for the Production of Documents and the Examination of the Debtor's Current and Former Officers, Directors and Employees, and Other Persons (the "Motion"), and that a telephonic hearing to consider the Motion will be held before the Honorable Martin Glenn, United States Bankruptcy Judge on **November 4, 2011 at 11:00 a.m.** (prevailing Eastern time) or as soon thereafter as counsel may be heard (the "Hearing").

**PLEASE TAKE FURTHER NOTICE** that any party wishing to participate by telephone in this Hearing on the Motion should contact CourtCall at 1-866-582-6878 to request a reservation to appear telephonically.

**PLEASE TAKE FURTHER NOTICE** that responses, if any, to entry of the order must (i) be in writing; (ii) state the name and address of the objecting party and nature of the claim or interest of such party; (iii) state with particularity the legal and factual bases of such objection; (iv) conform to the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules; (v) be filed with the Bankruptcy Court, together with proof of service, electronically, in accordance with General Order M-399, by registered users of the Court's Electronic Case Files system, and by all other parties in interest, on a 3.5 inch disk or CD-ROM, preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format no later than **November 4, 2011 at 9:00 a.m.** (prevailing Eastern Time) (the "Response Deadline"); and (vi) be served on (a) Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, New York, 10004, Attn: Christopher K. Kiplok, Esq., Jeffrey S. Margolin, Esq., and Eleni D. Theodosiou-Pisanelli, Esq.; (b) Securities Investor Protection Corporation, 805 Fifteenth Street, N.W., Suite 800, Washington, DC 20005, Attn: Kenneth J. Caputo, Esq., Christopher H. LaRosa, Esq.; and (c) Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street N.W., Washington, DC 20581, Attn: Robert B. Wasserman, Esq., with a courtesy copy to the chambers of the Honorable Martin Glenn, One Bowling Green, New York, New York 10004, Courtroom 501.

Dated: New York, New York  
November 3, 2011

HUGHES HUBBARD & REED LLP

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

In re:

MF GLOBAL INC.,

Debtor.

Case No. 11-02790 (MG) (SIPA)

**TRUSTEE'S MOTION FOR AN ORDER GRANTING AUTHORITY  
TO ISSUE SUBPOENAS FOR THE PRODUCTION OF DOCUMENTS AND  
THE EXAMINATION OF THE DEBTOR'S CURRENT AND FORMER  
OFFICERS, DIRECTORS AND EMPLOYEES, AND OTHER PERSONS**

James W. Giddens (the "Trustee"), as Trustee for the liquidation of the business of MF Global Inc. ("MF Global"), by and through his undersigned counsel, respectfully makes this motion (the "Motion"), pursuant to section 78fff-1(d) of the Securities Investor Protection Act ("SIPA"), 15 U.S.C. § 78aaa *et seq*<sup>1</sup> (the "SIPA Investigation Authority") and Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an order authorizing the Trustee to issue subpoenas for the production of documents and the examination of the current and former officers, directors, employees, and affiliates of MF Global, and other persons or entities with relevant information including, without limitation, MF Global's lenders, investors, and other financial transaction counterparties to certain transactions with MF Global

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1. SIPA appears at 15 U.S.C. § 78aaa *et. seq.* For convenience, subsequent references to SIPA will replace "15 U.S.C." with "SIPA."

(collectively, the “Witnesses”), in order to obtain all information in their possession, custody or control that is relevant to the issues the Trustee is empowered and obligated to investigate pursuant to the SIPA Investigation Authority. In support of the Motion, the Trustee respectfully represents as follows:

**PRELIMINARY STATEMENT**

1. SIPA specifically provides that among the powers and duties vested in the Trustee is the requirement to “investigate the acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its business, and any other matter, to the extent relevant to the liquidation proceeding.” SIPA § 78fff-1(d)(1). This provision enables the Trustee to examine, “by deposition or otherwise, the directors and officers of the debtor and any other witnesses concerning any matters” enumerated above. SIPA § 78fff-1(d)(2). In conjunction with the mandated investigation, the Trustee must report its findings to the Court, including any facts the Trustee ascertains concerning “fraud, misconduct, mismanagement, and irregularities,” as well as any possible causes of action to be pursued by the estate. SIPA §§ 78fff-1(d)(1) and (3). Likewise, the Trustee must prepare and submit to SIPC and others designated by the Court a statement of the investigation. SIPA § 78fff-1(d)(4).

2. In order for the Trustee timely and efficiently to conduct a comprehensive investigation and fulfill his fiduciary and statutory duties, it is imperative that the Trustee gain immediate and complete access to information relating to, and persons and entities in possession of information regarding, MF Global and the subject matters of the investigation. The Trustee and his professionals will need to uncover all of the relevant facts and information relating to the various subject matters of investigation, to obtain documents and other data relevant to the Trustee’s investigation, and to locate, and conduct interviews of, Witnesses with relevant information.

3. The Trustee intends and expects, in large part, to conduct his investigation with the voluntary cooperation of Witnesses and other entities. Certain information and potential witnesses, however, may be outside of the control of cooperative parties, and the Trustee anticipates that certain other Witnesses will refuse to appear voluntarily for an examination or produce documents responsive to the Trustee's document requests. In other instances, particularly with certain business and governmental entities, the Trustee anticipates that the production of documents or the provision of testimony will be conditioned upon the issuance of an appropriate subpoena. Therefore, in order to avoid the significant expense, time and delay that would necessarily be incurred if the Trustee were forced to file separate applications for each examination or document production request he deems necessary, the Trustee seeks the implementation of a streamlined process whereby he can serve subpoenas for documents and/or examinations on Witnesses that either refuse to voluntarily cooperate with the Trustee's request or condition their cooperation upon the issuance of a subpoena.

4. In light of SIPA's mandate that the Trustee conduct such an investigation, examine witnesses during the course of that investigation, and report to the Court and to SIPC the results of the investigation, it is not surprising that bankruptcy courts have granted similar relief in other SIPA proceedings. *See, e.g., In re Lehman Brothers Inc.*, No. 08-1420 (JMP) SIPA, ECF No. 561 (Bankr. S.D.N.Y. Jan. 15, 2009); *SIPC v. Bernard L. Madoff Inv. Secs. LLC*, Adv. Pro. No. 08-01789 (BRL) (Bankr. S.D.N.Y. Jan. 12, 2009); *SIPC v. MJK Clearing, Inc.*, Adv. Proc. No. 01-4257 (RJK) (Bankr. D. Minn. Nov. 22, 2001); *In re New Times Sec. Servs., Inc.*, No. 800-8178 (SB) SIPA (Bankr. E.D.N.Y. June 30, 2000); *In re A.R. Baron & Co., Inc.*, No. 96-8831A (PBA) SIPA (Bankr. S.D.N.Y. Mar. 3, 1997); *In re Weis Secs., Inc.*, 73 Civ. 2332 (S.D.N.Y.); *see also* 1 Collier on Bankruptcy ¶ 12.06[3] (16th ed. 2011) ([T]he courts

consistently grant authority to SIPA trustees to issue subpoenas pursuant to Bankruptcy Rule 2004.”).<sup>2</sup> Here, the Trustee is entitled to the same subpoena powers to ensure an efficient and cost-effective investigation consistent with SIPA’s statutory requirements.

5. By this Motion, in order to complete an independent investigation as expeditiously as possible, the Trustee also seeks the implementation of certain procedures in connection with the Trustee’s issuance of subpoenas (the “Subpoena Procedures”). The Subpoena Procedures are necessary to minimize the time and expense incurred in connection with scheduling and conducting the examinations, to maximize the information obtained from the Witnesses and to enable the Trustee to complete his investigation as expeditiously as possible. Specifically, the Trustee seeks, subject to the Witnesses’ rights available under applicable law, to establish certain time frames within which the proposed Witness is required to produce documents and appear for an examination. In addition, access to documents produced by the Witnesses and attendance at examinations would be limited to the Trustee and his professionals, who may authorize access to the Securities Investor Protection Corporation (“SIPC”), the U.S. Commodities and Futures Trading Commission (“CFTC”) and the Securities and Exchange Commission (“SEC”) provided that those agencies execute a confidentiality agreement. Several other cases, including *In re Lehman Brothers Inc.*, No. 08-1420 (JMP) SIPA, Docket No. 561 (Bankr. S.D.N.Y. Jan. 15, 2009) and *In re Enron Corp.*, No. 01-16034 (AJG) (Bankr. S.D.N.Y.), have employed similar procedures.

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2 In the Chapter 11 context, bankruptcy courts have provided similarly broad authority to examiners. *See, e.g., In re New Century TRS Holdings, Inc.*, No. 07-10416 (KJC) (Bankr. D. Del.), and *In re SemCrude, L.P.*, No. 08-11525 (BLS) (Bankr. D. Del.). In both *New Century* and *SemCrude*, the courts granted court-appointed examiners full authority to issue subpoenas requiring the production of documents and examination of witnesses upon persons and entities that the examiner believed possessed information regarding the investigations.

### **JURISDICTION & VENUE**

6. Following mandatory removal to this Court for all purposes as required by SIPA section 78eee(b)(4), this Court has “all of the jurisdiction, powers, and duties conferred by [SIPA] upon the court to which the application for the issuance of the protective decree was made.” SIPA § 78eee(b)(4).

7. Venue is proper in this Court pursuant to SIPA § 78eee(a)(3) and SIPA § 78aa.

8. The statutory predicates for the relief requested in the Motion are SIPA section 78fff-1(d); section 105 of title 11 of the United States Code (the “Bankruptcy Code”); Bankruptcy Rules 2004, 7030, 9014, and 9016; and Federal Rules of Civil Procedure 30(b)(6) and 45.

### **BACKGROUND**

9. On October 31, 2011, the Honorable Paul A. Engelmayer, United States District Court for the Southern District of New York, entered an Order (the “MF Global Liquidation Order”) pursuant to the provisions of SIPA in the case captioned *Securities Investor Protection Corp. v. MF Global Inc.*, Case No. 11-CIV-7750 (PAE).

10. The MF Global Liquidation Order *inter alia*: (i) appointed James W. Giddens as Trustee for the liquidation of the business of MF Global pursuant to § 78eee(b)(3) of SIPA; (ii) appointed Hughes Hubbard & Reed LLP (“HHR”) counsel to the Trustee pursuant to § 78eee(b)(3) of SIPA; and (iii) removed the case to this Court pursuant to § 78eee(b)(4) of SIPA (the “SIPA Proceeding”).

11. Pursuant to section 78fff-1(d) of SIPA, the Trustee shall:

(1) as soon as practicable, investigate the acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its

business, and any other matter, to the extent relevant to the liquidation proceeding, and report thereon to the court;

(2) examine, by deposition or otherwise, the directors and officers of the debtor and any other witnesses concerning any of the matters referred to in paragraph (1);

(3) report to the court any facts ascertained by the trustee with respect to fraud, misconduct, mismanagement, and irregularities, and to any cause of action available to the estate; and

(4) as soon as practicable, prepare and submit, to SIPC and such other persons as the court designates and in such form and manner as the court directs, a statement of his investigation of matters referred to in paragraph (1).

15 U.S.C. § 78fff-1(d).

12. To carry out the investigation of and reporting on these subjects, the Trustee will designate a team of professionals from HHR who have experience conducting internal investigations into complex financial matters, including attorneys who have conducted examinations of the debtor and prepared extensive Trustee's reports in SIPA liquidations (including Lehman Brothers Inc., A.R. Baron & Co. and Weis Securities, Inc). Counsel from the SIPC are also expected to participate actively in the investigation and have authorized the undersigned to say that they consent to this Motion.

### **RELIEF REQUESTED**

13. By this Motion, the Trustee respectfully requests entry of the proposed form of order attached as Exhibit A, authorizing him to issue subpoenas directing the production of documents from Witnesses and entities and the examination of Witnesses pursuant to SIPA section 78fff-1(d) and Bankruptcy Rule 2004, without separate application to this Court for each subpoena and in accordance with the Subpoena Procedures set forth in the proposed order. The Trustee believes that this authority is critical to the investigation. The subpoena powers and

procedures are vital to ensure that the Trustee can promptly obtain full access to all of the relevant information he needs to complete his investigation in a timely manner.

### **BASIS FOR RELIEF**

#### **A. Subpoena Powers Are Critical to the Investigation**

14. The relief sought in this Motion stems from SIPA's mandate that the Trustee undertake the intended investigation and has been granted in other SIPA proceedings. Bankruptcy Rule 2004(a) permits any party-in-interest to move for an order of the Court authorizing the examination of any entity. Fed. R. Bankr. P. 2004(a). Upon entry of an order authorizing a Bankruptcy Rule 2004 examination, the production of documents and the attendance of witnesses for examination may be compelled by subpoena as provided in Bankruptcy Rule 9016. Fed. R. Bankr. P. 2004(c). The scope of a Bankruptcy Rule 2004 examination encompasses "the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to discharge." Fed. R. Bankr. P. 2004(b). A party seeking authority to use Bankruptcy Rule 2004 must establish "good cause" for the relief requested. *See, e.g., Official Comm. of Unsecured Creditors v. Eagle-Picher Indus., Inc. (In re Eagle-Picher Indus., Inc.)*, 169 B.R. 130, 134 (Bankr. S.D. Ohio 1994).

15. Under SIPA, good cause exists to conduct the proposed discovery both under Bankruptcy Rule 2004 and apart from that Rule because the Trustee is obligated by statute to investigate an even broader and more extensive array of matters than those set forth in Bankruptcy Rule 2004—*e.g.*, the Trustee *must* investigate those transactions and financial conditions that are relevant to or otherwise impact the liquidation proceeding, and the Trustee must report its findings both to the Court and to SIPC.

16. The relief requested will give the Trustee the flexibility necessary for an effective and efficient investigation. As the Trustee proceeds, the existence of additional parties and documents will undoubtedly come to light. If the Trustee is obligated to file a separate application with this Court to obtain discovery for each new lead or potential Witness who refuses to cooperate, it will unnecessarily impede and delay the investigation at substantial cost and prejudice to MF Global's estate, and will impose an enormous burden on the Court. Thus, it is critical that the Trustee be granted the authority to issue subpoenas in connection with the investigation.

17. The Trustee will work with prospective Witnesses (or their known counsel) to obtain documents by agreement and schedule voluntary interviews at mutually agreeable dates, times and places wherever possible. If, however, the Trustee is to conduct his investigation promptly and thoroughly, he requires the ability to issue subpoenas to all entities to the extent they cease to be cooperative and to uncooperative future Witnesses without having to incur the substantial expense and delay of making a separate application for every such person. Nothing in the Motion or the proposed order granting the Motion shall limit the rights of any Witness or any other party under applicable law to object to or oppose any subpoena the Trustee may serve upon such Witness.

18. The Trustee will conduct the investigation with the participation of SIPC.

**B. A Streamlined Subpoena Process Is Necessary for an Efficient Investigation**

19. By this Motion, the Trustee also seeks to establish a streamlined process in connection with any subpoenas issued regarding the investigation and to limit access to documents produced in response to and examinations taken pursuant to subpoenas. A

streamlined process is necessary in order for the Trustee to be in a position to complete his investigation expeditiously.

20. Specifically, the proposed order seeks to establish the following Subpoena Procedures: (a) Witnesses shall be directed to produce, on a rolling basis, all documents responsive to the Trustee's subpoena within ten (10) days of the service of the subpoena (unless otherwise agreed by the Trustee), subject to any documents withheld under a claim of privilege; (b) if a Witness withholds any documents based upon a claim of privilege, the Witness is obligated to provide counsel for the Trustee with a privilege log containing the information required under Bankruptcy Rule 7026(a)(5), within ten (10) days of the service of a subpoena upon that Witness (unless otherwise agreed by the Trustee); and (c) the Witness is directed to submit to oral examination upon reasonable notice and, absent other agreement with the Trustee, in no event more than fifteen (15) days from the service of a deposition subpoena upon the Witness.

21. The Trustee submits that, based upon the circumstances of this case and allegations of misuse of segregated customer property, the proposed Subpoena Procedures are necessary and appropriate. The establishment of (and adherence to) deadlines for compliance with the subpoenas is crucial to the timely completion of the investigation.

### **NOTICE**

22. The Trustee has provided notice of the Motion on SIPC, the SEC, the IRS, the CFTC, the United States Attorney for the Southern District of New York and all parties who have requested notice in this proceeding.

**NO PRIOR REQUEST**

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

**CONCLUSION**

24. WHEREFORE, the Trustee respectfully requests that this Court enter an Order: (i) authorizing the Trustee to compel the production of documents and the testimony of Witnesses through the issuance of subpoenas pursuant to SIPA section 78fff-1(d) and Bankruptcy Rule 2004; (ii) authorizing the implementation of a streamlined procedure regarding the Trustee's issuance of subpoenas including the establishment of deadlines for Witnesses to produce responsive documents and appear at an examination; and (iii) granting the Trustee such other and further relief as is just and proper.

Dated: New York, New York  
November 3, 2011

HUGHES HUBBARD & REED LLP

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Attorneys for James W. Giddens, Trustee for  
the SIPA Liquidation of MF Global Inc.

**Exhibit A**

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

In re:

MF GLOBAL INC.,

Debtor.

Case No. 11-02790 (MG) (SIPA)

**ORDER GRANTING AUTHORITY TO ISSUE SUBPOENAS FOR THE PRODUCTION  
OF DOCUMENTS AND THE EXAMINATION OF THE DEBTOR'S CURRENT AND  
FORMER OFFICERS, DIRECTORS AND EMPLOYEES, AND OTHER PERSONS**

Upon the motion (the “Motion”)<sup>1</sup> of James W. Giddens (the “Trustee”), as Trustee for the liquidation of the business of MF Global Inc. (“MF Global”), pursuant to section 78fff-1(d) of the Securities Investor Protection Act (“SIPA”) and Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for an order authorizing the Trustee to issue subpoenas for the production of documents and the examination of the current and former officers, directors, employees, and affiliates of MF Global, and other persons or entities with relevant information including, without limitation, MF Global’s lenders, investors, and other financial transaction counterparties to certain transactions with MF Global (collectively the “Witnesses”); and the Court finding that adequate notice of the Motion having been given; and it appearing that no other notice need be given; and after due deliberation and sufficient cause appearing therefore, it is

ORDERED that the Motion is GRANTED; and it is further

ORDERED, that the Trustee is authorized, pursuant to SIPA section 78fff-1(d) and Bankruptcy Rule 2004, to issue such subpoenas as may be necessary to compel the

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

production of documents and the testimony of Witnesses in connection with his investigation of MF Global; and it is further

ORDERED, that the Trustee shall serve each subpoena and a copy of the order entered pursuant to this Motion on (i) the target of the subpoena, (ii) SIPC, (iii) the SEC, (iv) the CFTC, (v) the IRS, and (vi) the United States Attorney for the Southern District of New York; and it is further

ORDERED, that the Trustee shall file with the Court an affidavit or declaration or service for each subpoena he serves; and it is further

ORDERED, that Witnesses are directed to produce, on a rolling basis, all responsive documents described in the Trustee's subpoena such that all responsive documents are received by the Trustee within ten (10) days of the service of a subpoena upon such Witness (unless otherwise agreed by the Trustee), subject to any documents withheld under a claim of privilege; and it is further

ORDERED, that if a Witness withholds the production of any documents to the Trustee based upon a claim of privilege, such Witness is directed to provide counsel for the Trustee with a privilege log, containing the information required under Bankruptcy Rule 7026, within ten (10) days of the service of a subpoena upon the Witnesses (unless otherwise agreed by the Trustee); and it is further

ORDERED, that the Witness is directed to submit to oral examination upon reasonable notice and, absent other agreement with the Trustee, in no event more than fifteen (15) days from the date of the service of a deposition subpoena upon such Witness; and it is further

ORDERED, that nothing herein shall limit the rights of any Witness or any other party under applicable law to object to or oppose any subpoena the Trustee may serve upon such Witness; and it is further

ORDERED, that this Court shall retain jurisdiction to resolve any disputes arising or related to this Order including any discovery disputes that may arise between or among the parties and to interpret, implement and enforce the provisions of this Order; and it is further

ORDERED, that in accordance with SIPA section 78fff-1(d) and Bankruptcy Rules 2004 and 9016, the Clerk of this Court shall issue subpoenas, signed but otherwise in blank, as requested by the Trustee; and it is further

ORDERED, that this Order is without prejudice to the Trustee's right to file further motions seeking additional documents and testimony pursuant to SIPA section 78fff-1(d) and Bankruptcy Rule 2004(a) or any other applicable Bankruptcy Rules.

Dated: November \_\_, 2011  
New York, New York

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HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE