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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

BRIEF OF THE COMMODITY FUTURES TRADING COMMISSION PURSUANT TO THE COURT'S NOVEMBER 17, 2011 ORDER

On November 17, 2011, this Court instructed the CFTC, SIPC, and the Trustee for MF Global, Inc., to submit briefing on the regulations applicable to the remaining distributions of customer property by the Trustee. Pursuant to the Court's instructions, the CFTC respectfully states as follows:

1. The CFTC's regulations implement a "clear mandate" from Congress under the Commodity Exchange Act (CEA) and Bankruptcy Code to ensure "customer protection" in commodity broker liquidation. *See In re Stotler & Co.*, 144 B.R. 385, 392 (N.D. Ill. 1992) (describing the statutes). These laws are designed to "'ensure that the property entrusted by customers to their brokers will not be subject to the risks of the broker's business and will be available for disbursement to customers if the broker becomes bankrupt.'" *See id*. at 387 (quoting S. Rep. No. 989, 95th Cong. 2d Sess. (1977)). Accordingly, in the liquidation of a commodity broker under Title 11, "commodity customers are granted the highest priority against the bankrupt broker's estate." *In re Bucyrus Grain Co., Inc.*, 127 B.R. 45, 48 (D. Kan. 1988). Section 766 of the Bankruptcy Code provides that the trustee in commodity broker liquidation proceedings "shall distribute customer property ratably to customers on the basis and to the extent of such customers' allowed net equity claims, and in priority to all other claims," except for certain administrative expenses. *See* 11 U.S.C. § 766(h). The CFTC, acting pursuant to its robust statutory mandate to protect commodity customers in commodity broker liquidations, *see* 7 U.S.C. § 24, has enacted a detailed set of procedures to guide trustees and assist courts in implementing the CEA and Subchapter IV of Title 11 of the Bankruptcy Code. *See* 17 C.F.R. § 190.01-.10 & appendices. As described below, these regulations, *inter alia*: (1) define what constitutes "customer property," *id*. § 190.08; (2) establish a system of customer classes and account classes designed to ensure a fair and orderly process of *pro rata* distribution,

id. §§ 190.01(a), (m), (bb), & (hh); and (3) provide a formula for calculating allowable "net equity" claims, *id*. § 190.07. Under these regulations and the statutes they implement, all customer claims must be satisfied in full before property of the estate may be used to pay any general creditors' claims, *see* 11 U.S.C. § 766(h); 17 C.F.R. § 190.08(a), and no "insider" who also happens to be a brokerage customer may be paid until all public customers' claims are fully satisfied, *see* 11 U.S.C. § 766(h); 17 C.F.R. § 190.08(b) & (c)(2).

"Customer Property"

2. The CEA grants the CFTC broad authority to define what is "customer property" that must be distributed in preference to substantially all other claims. 7 U.S.C. § 24(a). While the Bankruptcy Code itself contains an expansive definition of "customer property," 11 U.S.C. § 761(10), the CEA states that "*[n]otwithstanding title 11 of the United States Code*," the CFTC may issue regulations to "provide . . . that certain cash, securities, other property, or commodity contracts are to be included in or excluded from customer property." 7 U.S.C. § 24(a) (emphasis supplied).[1] Pursuant to that statutory authority, the CFTC promulgated 17 C.F.R. § 190.08, which, among other things, specifies 15 categories of "customer property." Categories of particular relevance in this proceeding include:

a. **Segregated Customer Property.** Section 190.08(a)(ii)(A) states that "customer property" includes "[a]ll cash, securities, or other property which . . . [i]s segregated on the filing date." This is a reference to the requirements, such as in CEA Section 4d(a)(2), that a commodities broker account separately for, and not

[1] This proceeding is brought under the Securities Investor Protection Act of 1970, 15 U.S.C. § 78aaa, *et seq.*, rather than Title 11, but SIPA provides that provisions of the Bankruptcy Code apply "to the extent consistent with" SIPA. *Id*. § 78fff(b). SIPA contains no provision relevant to the definition of commodity customer property, nor is there any other inconsistency between the statutes in this regard. Thus, the definition of "customer property" set forth in Title 11 applies, as modified by CFTC regulations.

commingle with other funds, any money, securities, or property the broker receives from a public customer to margin, guarantee, or secure futures or commodity options transactions. 7 U.S.C. § 6d(a)(2); *see also* 17 C.F.R. § 1.20(a) (requiring that customer funds "be deposited under an account name which clearly identifies them as such and shows that they are segregated as required by the [Commodity Exchange] Act and this part"). Analogous requirements apply to collateral associated with foreign futures. *See* 17 C.F.R. § 30.7. Thus, Section 190.08(a)(1)(ii)(A) confirms that, pursuant to the priority that Section 766 of the Bankruptcy Code gives to customer property, segregated customer property is to be distributed by a bankruptcy trustee to commodity customers in preference to other claims.

b. **Property that Should Have Been Segregated.** Section 190.08(a)(1)(i)(A) provides that "customer property" also includes "[a]ll cash, securities, or other property . . . , received, acquired, or held by or for the account of the debtor, from or for the account of a customer, which is . . . received, acquired or held to margin, guarantee, secure, purchase or sell a commodity contract[.]" This category, which parallels the definition of "customer property" contained in Section 761(10) of the Bankruptcy Code, includes all property that is subject to the segregation requirements in, *inter alia*, CEA Section 4d(a)(2). Neither the regulation nor the Bankruptcy Code, however, conditions the classification as "customer property" on the broker's actual compliance with the relevant segregation requirement. Indeed, 17 C.F.R. § 190.08(a)(1)(ii)(G) confirms that customer property includes "cash, securities or other property which . . . is

property of the debtor that any applicable law, regulation or order requires to be set aside for the benefit of customers . . . ." Thus, property that should have been segregated, but was not, or as to which segregation was not maintained, remains customer property subject to priority distribution.

c. **Property that Has Been Converted.** Section 190.08(a)(1)(ii)(F) specifies that "customer property" also includes all such property that "[w]as unlawfully converted but is part of the debtor's estate." Thus, where the debtor or its agents have unlawfully removed customer property from segregation, that property remains customer property subject to priority distribution.

d. **Property Recovered by the Trustee.** If property that would be covered by Section 190.08(a)(1)(i)(A), because it was "received, acquired or held to margin, guarantee, secure, purchase or sell a commodity contract," has been withdrawn from the estate, Section 190.08(a)(1)(ii)(D) provides that such property nevertheless becomes "customer property" if it is "subsequently recovered by the avoidance powers of the trustee." Thus, if customer property has been withdrawn from the estate and transferred elsewhere – for example, to the holding company – and is recovered by the Trustee in this case, then such property will be restored as customer property.

e. **Specifically Identifiable Property.** "Specifically identifiable property" is a class of property defined in Section 190.01(kk) that must be transferred or returned upon instructions from the customers who have posted such property as collateral, generally because it is non-fungible from the customer's perspective, subject to certain conditions. Notable among those conditions is that customers who have

posted specifically identifiable property as collateral are not excused from the *pro rata* distribution, that is, they will suffer the same loss of value as other customers with property in the same account class. Section 190.08(a)(1)(ii)(C) confirms that specifically identifiable property is "customer property." Rules applicable to the distribution of specifically identifiable property are discussed *infra* at ¶¶ 16-19.

f. **Shortfalls in Customer Property.** Finally, Section 190.08(a)(1)(ii)(J) provides that, "only to the extent that" the enumerated types of customer property are insufficient to satisfy in full all claims of public customers, other estate property will be used to satisfy those claims.[2]

Customer Classes and Account Classes

3. Section 766 of the Bankruptcy Code requires that commodity customer property be distributed ratably. 11 U.S.C. § 766(h). CFTC regulations specify that, in that process, the trustee must allocate the "property of the debtor's estate . . . among account classes and between customer classes." 17 C.F.R. § 190.08. Each of these allocated amounts is then treated as "a separate estate of the customer class and the account class to which it is allocated." *Id*.

4. **Customer Classes.** Section 190.01(m) establishes two "customer classes": public customers and non-public customers. Generally, a "non-public customer" is a customer who is also an insider, affiliate, or other controlling person or entity of the debtor. *Id.* § 190.01(bb) (referring to, *inter alia*, *id.* §1.3(y), which defines proprietary accounts). All other customers are public customers. *Id*. § 190.01(hh). Where a futures commission merchant

[2] As has been mentioned elsewhere during this case, a bankruptcy court in *In re Griffin Trading Co.*, 245 B.R. 291 (Bankr. N.D. Ill. 2000), found that this provision exceeded the Commission's authority. The Commission appealed the decision, which was vacated as part of a settlement before the appeal was decided. The Commission submits that the time for briefing and resolving any issues concerning the validity of §190.08(a)(1)(ii)(J) is when (and if) it becomes clear that the enumerated types of customer property are insufficient.

("FCM") such as MF Global, Inc. is a corporation, then the account of an owner of ten percent or more of the capital stock of that corporation (such as MF Global Holdings, Ltd.) is a proprietary account, *see id*. § 1.3(y)(iv), as is the account of "a business affiliate that directly or indirectly controls such . . . corporation" or "a business affiliate that, directly or indirectly, is controlled by or is under common control with such corporation," *see id.* § 1.3(y)(vii) & (viii). The customers owning such proprietary accounts are non-public customers.

5. All allowable net equity claims by public customers must be satisfied in full before any distribution may be made to any non-public (insider) customer. *See* 11 U.S.C. § 766(h) ("Notwithstanding any other provision of this subsection, a customer net equity claim based on a proprietary account, as defined by Commission rule, regulation or order, may not be paid either in whole or in part, directly or indirectly, out of customer property unless all other customer net equity claims have been paid in full.");[3] 17 C.F.R. § 190.08(b); *id*. § 190.08(c)(2) (establishing a 4-tier allocation order); CFTC, *Bankruptcy*, 46 Fed. Reg. 57535, 57546 (proposed Nov. 24, 1981) (explaining that the rules "subordinate claims for non-public customers for which no property is required to be segregated under the [CEA] and the [CFTC's] regulations to claims of public customers for which property" must be "so segregated"). Thus, neither MF Global Holdings, Ltd., nor any of its subsidiaries, whether or not such subsidiaries are themselves debtors in bankruptcy, are eligible to receive any customer property on account of any of their claims until and unless "all other customer net equity claims have been paid in full." 11 U.S.C. § 766(h).

6. **Account Classes.** Section 190.01(a) specifies six types of customer accounts that must be recognized by the trustee as separate "account classes" for various purposes in

[3] This language was added by Section 19(d) of P.L. 97-222, 96 Stat. 235 (1982).

liquidation: futures accounts, foreign futures accounts, leverage accounts, commodity option accounts, delivery accounts, and (where, as here, the debtor is an FCM) cleared over-the-counter (OTC) derivative accounts. 17 C.F.R. § 190.01(a). The reason for identifying classes of accounts is to implement *pro rata* distribution in the context of segregation requirements that differ among different types of investment accounts. *Bankruptcy*, 46 Fed. Reg. at 57536.[4] Property in "futures accounts," for example, is subject to the segregation requirement set forth in Section 4d(a)(2) of the CEA, while property in "foreign futures accounts" is subject to the segregation requirement in 17 C.F.R. § 30.7. Moreover, property in "foreign futures accounts" is more likely to be posted with members of foreign boards of trade, and thus subject to the risks of being subject to non-U.S. insolvency proceedings.

7. Pursuant to Section 4d(a)(2) of the CEA, the Commission may, by rule, regulation or order, permit commodity contracts and associated collateral that would normally not be associated with the futures account class to be commingled with the commodity contracts and associated collateral of that account class. The Commission has issued such orders (commonly referred to as "4d Orders") with respect to specified foreign futures contracts,[5] as well as

[4] The Commission created the "account class" concept in adopting original Part 190. *See Bankruptcy*, 46 Fed Reg 57535. In making that proposal, the Commission cited to the House Report for the 1978 Bankruptcy Code, which noted that:

> It is anticipated that a debtor with multifaceted characteristics will have separate estates for each different kind of customer. Thus, a debtor that is a leverage transaction merchant and a commodity options dealer would have separate estates for the leverage transaction customers and for the options customers, and a general estate for other creditors.

See H.R. Rep. 95-595 at 355, 1978 U.S.C.C.A.N. 5963, 6346.

[5] *See, e.g.*, Order, *Treatment of Funds Held in Connection with the Clearing by the New York Mercantile Exchange, Inc. of Contracts Traded on the Dubai Mercantile Exchange Limited* (May 23, 2007), *available at* http://www.cftc.gov/files/opa/press07/opaNYMEX-DME4dOrderfinal.pdf.

specified cleared swaps contracts.[6] Pursuant to 17 C.F.R. § 190.01(a), such commingled contracts and property are treated as part of the futures account class.

8. In May 2010, before the enactment of the Dodd-Frank Act, the Commission created an account class for cleared OTC derivatives. Cleared OTC derivatives are those submitted by an FCM for clearing on a clearing organization registered with the Commission as a derivatives clearing organization (a "DCO"), *see* 11 U.S.C. § 761(2); 17 C.F.R. 190.01(e) & (oo), and thus do not include OTC derivatives cleared on clearing organizations that are not so registered. Moreover, they are limited to those positions which, along with the property margining, guaranteeing or securing such positions, are required to be held in a separate account for cleared OTC derivatives only, in accordance with the rules or by-laws of a DCO. 17 C.F.R. § 190.1(oo).[7]

9. The trustee must carefully trace and attribute all customer property to the appropriate account class: Section 190.08(c)(1) provides that "property held by or for the account of a customer, which is segregated on behalf of a specific account class, or readily traceable on the filing date to customers of such account class, must be allocated to the customer estate of the account class for which it is segregated or to which it is readily traceable." Thus, if customer property is found to have been moved out of the account in which it belongs, the trustee must trace and treat that property as belonging to the correct account class. *See Bankruptcy*, 46 Fed. Reg. at 57552 ("[T]o the extent property can be traced and restored to the

[6] *See, e.g.*, Order, *Permitting Customer Positions in OTC Wheat Calendar Swaps to Be Commingled With Other Positions and Funds Held in Customer Segregated Accounts*, 75 Fed. Reg. 34983 (June 10, 2010).

[7] While Section 190.01(oo) also refers to segregation and set-aside rules, regulations or orders issued by the Commission, no such rules, regulations or orders (other than the 4d Orders such as referred to above) have yet been promulgated.

customer estate, the trustee should attempt to trace and restore it, provided that the estate would be reasonably augmented as a result.").

10. Once the segregated or traceable property has been properly allocated by account class, any customer property that is not segregated or traceable to a particular class must be allocated so as to equalize the percentage of each claim to be paid for each class of accounts. 17 C.F.R. § 190.08(c)(2).

Calculation of Net Equity and the Funded Balance

11. As stated above, the Bankruptcy Code requires that *pro rata* distributions be made "on the basis and to the extent of such customers' allowed net equity claims." 11 U.S.C. § 766(h). Section 20(a)(5) of the CEA authorizes the CFTC to provide by rule or regulation "how the net equity of a customer is to be determined." 7 U.S.C. § 24(a)(5); *see also* 11 U.S.C. § 761(17) (subjecting the statutory definition of "net equity" to "such rules and regulations as the [CFTC] promulgates under the [CEA]"). Pursuant to that grant of authority, Section 190.07(b) defines "net equity" as "the total claim of a customer against the estate of the debtor based on the commodity contracts held by the debtor" net of certain amounts, and then establishes a six-step process for calculation of net equity. 17 C.F.R. § 190.07(b). The regulations contain valuation instructions for various types of property, including, *inter alia*, exchange-traded contracts, principal contracts (generally those not traded on an exchange), securities, and all other property. *Id.* § 190.07(e)(1)-(5). The following are key elements of this valuation process:

a. When property such as an exchange-traded contract or publicly traded security is liquidated by the trustee, the value assigned for net equity purposes is equal to the net proceeds of that liquidation. *Id.* § 190.07(e). The potential for unfairness may arise if identical contracts or securities are liquidated on the same day but at

different prices. In such cases, the trustee may "use the weighted average of the liquidation prices in computing the net equity of each customer holding such contracts, securities or property." *Id*. Where an exchange-traded "contract is transferred, its value shall be determined at the time of its transfer." *Id.* § 190.07(e)(1).

b. Unliquidated exchange-traded contracts are valued at the settlement price as of the close of business on the relevant board of trade, *id*. § 190.07(e)(1), while a security is valued at its closing price on the exchange where it is traded, *id*. § 190.07(e)(4). Unliquidated physical ("cash") commodities are assigned their fair market value. *Id*. § 190.07(e)(5).

c. A customer's net equity will fluctuate during the entire period that the debtor's estate contains open commodity contracts. Unlike a securities account, which is typically valued as if it had been liquidated on the filing date, commodity contracts must generally be valued as of the date they are returned to the customer or transferred to an account at a different brokerage. *Bankruptcy*, 46 Fed. Reg. at 57546. Such value may change on a daily basis until the final net equity determination is made under the rules. *Id*.

d. "Net equity" in this context does not, in the first instance, include any claims a customer may have against the debtor for matters other than commodity contracts held by the debtor for or on behalf of such customer. Free-standing tort claims, for example, would not be a part of the customer's net equity. 6-761 *Collier on Bankruptcy* ¶ 761.18 (2011). However, if the customer has obligations to the debtor (other than in connection with commodity contracts) that exceed the

obligations of the debtor to the customer (again, other than in connection with commodity contracts), then the net of the two sets of obligations shall be deducted from the customer's net equity balance and, if the customer has claims in multiple account classes, such deduction shall be made proportionally. *See generally* 17 C.F.R. §190.07(b)(3)(ii).

e. Some customers may have accounts of more than one class. *See supra* at ¶ 6 (discussing account classes). In net equity calculations, an amount is determined for each customer for each account class, and any negative net equity amounts are used to offset any positive equity balance the same customer may have in a different account class. 17 C.F.R. § 190.07(b)(3)(iii).

f. In order to factor in any interim distributions that have taken place, Section 190.07(b)(4) contains an "add-back" provision, providing that the amount already distributed or transferred must be included in the total equity obtained for each affected customer.

g. While Section 190.07(b) governs the determination of the extent of each customer's claim, Section 190.07(c) governs the determination of the *pro rata* amount that each claimant may be paid, based on the funds available in the estate (the "funded balance"). In effect, this is the portion of the estate that the customer will be paid (with respect to each account class up to the amount of that customer's allowable net equity claim). *Id.* § 190.07(c).

12. Pursuant to 17 C.F.R. § 1.49, certain customer property segregated under CEA Section 4d may be authorized, by customers, to be held outside the United States, or in currencies other than the U.S. Dollar. While all U.S. Dollar obligations to customers must be

held in the United States and in U.S. Dollars, obligations denominated in "money center" currencies (*i.e.*, Canadian Dollars, Euro, Japanese Yen, and United Kingdom Pounds), may be held either in the U.S. or a money center country (*i.e.*, Canada, France, Italy, Germany, Japan or the United Kingdom), and obligations denominated in other currencies may be held in the United States, a money center country, or in the country of origin of the currency unless a customer provides instructions to the contrary. *See* 17 C.F.R. § 1.49(c) & (e).

13. Appendix B, Framework 2 to Part 190 is designed to allocate sovereign risk to those customers who have undertaken such risk. Thus, those customers whose obligations from the FCM are denominated in U.S. Dollars would not be subject to sovereign risk. On the other hand, those customers who have accepted having customer funds deposited in a specific foreign location would accept the risk that the insolvency regime in that location might make such funds unavailable for distribution on the same terms as the bankruptcy regime would in the United States. Those customers who have authorized having obligations from the FCM denominated in currencies other than the U.S. Dollar would be subject to sovereign risk with respect to currency (which implies an explicit action by a sovereign with respect to its currency, as opposed to the workings of the foreign exchange markets).

14. In the event that material amounts of MF Global, Inc., Section 4d property are found to be affected by sovereign risk, the Commission will provide further briefing on this topic.

15. Because Framework 2 is dependent on customer authorization to hold customer property in currencies other than the U.S. Dollar and in locations other than the U.S., and because these concepts are not found in 17 C.F.R. § 30.7, the Commission observes that Framework 2 is not applicable to the foreign futures account class.

Specifically Identifiable Property

16. As discussed above, specifically identifiable property is a class of property that is generally non-fungible from the perspective of the customer and is not required to be liquidated by the trustee. *See Bankruptcy*, 46 Fed. Reg. at 57539 (explaining that "cash equivalent" of such property may not be sufficient to prevent damages to the customer). At the customer's election, such property may be returned to the customer as part of the trustee's distribution. However, because the requirement that customer property be distributed ratably still applies, 11 U.S.C. § 766(h), the regulations must account for the possibility that the customer's specifically identifiable property may have value in excess of the funded balance to which that customer is entitled. If the specifically identifiable property is more valuable to the customer than the amount to which the customer would otherwise be entitled in a *pro rata* distribution, the customer may recover the specifically identifiable property upon depositing with the trustee an amount equal to the difference between the value of the specifically identifiable property and the funded balance. 17 C.F.R. § 190.08(d). To illustrate, if a customer is entitled to a distribution of $2 million, but instead seeks the return of registered securities with a value of $2.25 million, the customer may receive those securities upon depositing $250,000 with the trustee, or, if the securities were divisible, could receive $2 million worth of such securities.[8] If the registered securities had a value of $1.75 million, the customer could receive the securities and the remaining $250,000. In this way, a customer may receive the return of property of particular importance to that customer without affecting the parity of *pro rata* distribution among all customers within the same customer class and account class.

[8] In cases where specifically identifiable property is not practically divisible (reference was made at the November 9, 2011 hearing to a single gold bar), the Commission will work with the Trustee to achieve practical and equitable solutions that protect the interests of individual customers, but also protect the interests of the customers as a group.

17. The definition of specifically identifiable property, set forth in 17 C.F.R. § 190.01(kk), is restrictive. It includes certain property held as collateral, including (1) securities that are held for the account of a customer, registered in the name of that customer, not transferable by delivery, and not short-term obligations, which the debtor cannot transfer by delivery, and (2) warehouse receipts and other documents of title which, as of the filing date, can be identified on the books and records of the debtor as held for the account of a particular customer and are neither in bearer form nor are transferable by delivery. It also includes fully paid non-exempt securities identified on the books and records of the debtor as held for or on behalf of the commodity account of a particular customer for which, according to such books and records as of the filing date, no open commodity contracts were held in the same capacity.

18. Specifically identifiable property also includes property associated with the making or taking of delivery on commodity contracts. It includes:

a. Warehouse receipts and other documents of title, as well as physical commodities received, acquired, or held by or for the account of the debtor for the purpose of making or taking delivery or exercise from or for the account of a customer, which as of the entry of the order for relief can be identified on the books and records of the debtor as received from or for the account of a particular customer as held specifically for the purpose of delivery or exercise.

See 17 C.F.R. §190.01(kk)(3).

b. Certain cash or other property, for the purpose of taking of physical delivery on a long futures contract or for payment of the strike price upon exercise of a short put option contract (that is, an obligation to buy) or a long call option contract (that is, a right to buy), in either case on a physical commodity which cannot be

settled in cash. Such cash or property is covered to the extent it is in excess of the amount necessary to margin the commodity contract prior to the notice date or exercise date. The cash or other property must be identified on the books and records of the debtor as received from or for the account of a particular customer, specifically for the purpose of payment of the notice price upon taking delivery or the strike price upon exercise, and must have been received by the debtor at the requisite time. The requisite time is on or after three business days before the first notice date or exercise date. Moreover, the customer must take delivery or exercise the option in accordance with the applicable contract market rules. *See* 17 C.F.R. §190.01(kk)(4).

c. The cash price tendered for any property deposited prior to the entry of the order for relief to make physical delivery on a short futures contract or for exercise of a long put option contract (the right to sell) or a short call option contract (the obligation to sell), in either case on a physical commodity which cannot be settled in cash. Such cash price is covered to the extent it is in excess of the amount necessary to margin the commodity contract prior to the notice date or exercise date. The property deposited must be identified on the books and records of the debtor as received from or for the account of a particular customer, specifically for the purpose of a delivery or exercise, respectively, and must have been received by the debtor at the requisite time. The requisite time is on or after three business days before the first notice date or exercise date. Moreover, the customer must make delivery or exercise the option in accordance with the applicable contract market rules. *See* 17 C.F.R. §190.01(kk)(5).

19. Pursuant to Section 190.05(a)(2), a "delivery account" is an account prominently designated as such in the records of the debtor which contains only the specifically identifiable property associated with delivery set forth in the previous paragraph, except that delivery need not be made or taken and exercise need not be effected for such property to be included in a delivery account. Given the specific requirements set forth in that paragraph and the corresponding regulation, it is quite possible that much of the property associated with delivery in this case may not qualify as part of a "delivery account."

* * *

The CFTC will continue to assist the Court in any way possible to ensure the prompt, orderly, and equitable return of customer property in accordance with the applicable statutes and regulations.

COMMODITY FUTURES TRADING COMMISSION

Dated: December 12, 2011
Washington, D.C.

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