

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

U. S. COMMODITY FUTURES  
TRADING COMMISSION,

Plaintiff,

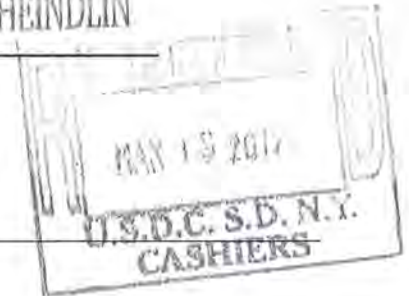
v.

MBF CLEARING CORP.,  
A New York limited liability company,

Defendant.

12 CV 1830  
Civil Action No: \_\_\_\_\_

Hon. JUDGE SCHEINDLIN



COMPLAINT

The United States Commodity Futures Trading Commission (“Commission” or “CFTC”),  
by and through its attorneys, alleges as follows:

**I. INTRODUCTION**

1. Defendant MBF Clearing Corp. (“MBF”) is a registered futures commission merchant (“FCM”). FCMs receive money, securities and other property (“funds”) from their customers to margin, guarantee, or secure the customers’ futures and options trades. Under the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 1 *et seq.* (2006), the Act, as amended,<sup>1</sup> to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Commission’s Regulations (the “Regulations”) promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011), FCMs are required to separately account for customer funds, and customer funds may not be “commingled with the funds of [the

<sup>1</sup> The Commodity Exchange Act, as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008) and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203 (“Dodd-Frank Act”), Title VII (the Wall Street Transparency and Accountability Act of 2010), §§701-774, 124 Stat. 1376 (enacted July 16, 2010).

FCM] or used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom [they] are held.” Section 4d(a)(2) of the Act, as amended, to be codified at 7 U.S.C. § 6d(a)(2). The accounts where customer funds are held are commonly referred to as “segregated accounts.” FCMs must deposit customer funds under an account name that clearly identifies them as such. Regulation 1.20(a), 17 C.F.R. § 1.20(a) (2011). Segregated accounts are required to ensure that customer funds are protected and available for withdrawal or transfer even if an FCM experiences financial distress or enters into bankruptcy. The requirement that customer funds be segregated is one of the cornerstones of customer protection under the Act.

2. FCMs also are required to obtain a written acknowledgment from each bank, trust company, clearing organization, or other FCM (collectively “depositories”) with whom they deposit customer funds stating that the depository is holding customer funds and those funds are being held in accordance with the applicable provisions of the Act and Regulations. Regulation 1.20(a), 17 C.F.R. § 1.20(a) (2011). This document is commonly referred to as a “customer segregation acknowledgment letter.” Further, FCMs must obtain a written acknowledgment from each depository with which they deposit funds belonging to foreign futures and options customers stating that the depository is holding foreign customer funds and those funds are being held in accordance with Regulation 30.7, 17 C.F.R. § 30.7 (2011). This is commonly referred to as a “30.7 acknowledgment letter.”

3. From September 2008 through March 2010, MBF, through its officers and/or employees, deposited customer funds into the U.S. Government Money Market Fund (the “USG Fund”), account number xxxx2069 (the “USG Fund Account”), with JP Morgan Chase Bank National Association (“JPMorgan”). MBF customer funds deposited into the USG Fund

Account were not segregated because, among other things, the account was not properly titled, its redemption provisions were not compliant with CFTC Regulations, and MBF did not possess the requisite acknowledgement letters. During the relevant time, MBF routinely held between \$30 million and \$90 million in the USG Fund Account.

4. By depositing customer funds into a non-segregated account, MBF violated Section 4d(a)(2) of the Act, as amended, to be codified at 7 U.S.C. § 6d(a)(2), and Regulations 1.20(a), 1.26(a), 17 C.F.R. §§ 1.20(a), 1.26(a) (2011). By virtue of its depositing and holding customer funds in the non-compliant USG Fund Account and failing to maintain the documentation for this account, MBF also violated Regulation 1.25, 17 C.F.R. § 1.25 (2011).

5. MBF also failed to obtain a customer segregation acknowledgment letter for the USG Fund account in violation of Regulation 1.20(a), 17 C.F.R. § 1.20(a) (2011). Additionally, during the time period beginning in or prior to September 2007 and continuing through December 2010, MBF failed to obtain and/or maintain customer segregation acknowledgment letters for at least six additional customer segregated accounts in violation of Regulation 1.20(a), 17 C.F.R. § 1.20(a) (2011). During the time period beginning in or prior to February 2007 and continuing through April 2010, MBF also failed to maintain 30.7 acknowledgement letters for at least two accounts holding foreign customer funds in violation of Regulation 30.7, 17 C.F.R. § 30.7 (2011).

6. MBF also failed to maintain sufficient funds in segregation on approximately 322 business days during the period beginning on October 3, 2008 and continuing through March 26, 2010, in violation of Regulation 1.49(e)(1), 17 C.F.R. § 1.49(e)(1) (2011).

7. By virtue of including the funds deposited and held in the USG Fund Account in its report of segregated customer funds, MBF filed at least one incorrect report with the Commission in violation of Regulation 1.10(d)(1)(v), 17 C.F.R. § 1.10(d)(1)(v) (2011).

8. During the time period beginning in or prior to September 2007 and continuing through at least December 2010, MBF failed to diligently supervise its employees and agents. MBF did not have any written policies or procedures governing the opening and maintenance of customer segregated accounts, nor did MBF implement an adequate supervisory structure to insure the proper segregation of customer funds.

9. By this conduct and further conduct described herein, MBF has engaged, is engaging, or is about to engage in acts and practices that violate certain provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2006), the Act, as amended, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Commission's Regulations, 17 C.F.R. §§ 1.1 *et seq.* (2011).

10. Accordingly, the CFTC brings this action pursuant to Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, to enjoin MBF's unlawful acts and practices and to compel their compliance with the Act and the Regulations. Unless restrained and enjoined by this Court, defendant MBF is likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below. In addition, the Commission seeks civil monetary penalties and remedial ancillary relief, including without limitation restitution, disgorgement, pre- and post-judgment interests, and such other equitable relief as this Court may deem necessary and appropriate.

## **II. JURISDICTION AND VENUE**

11. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2006), which authorizes the Commission to seek injunctive relief against



any person whenever it shall appear that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

12. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2006), in that defendant MBF is found in, inhabits and/or transacts or has transacted business in this District, and defendant's acts and practices in violation of this Act occurred, are occurring, and/or are about to occur within this District, among other places.

### **III. PARTIES**

13. The U.S. Commodity Futures Trading Commission is an independent federal regulatory agency charged by Congress with the responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2006), the Act, as amended, to be codified at 7 U.S.C. §§ 1 *et seq.*, and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2011).

14. MBF Clearing Corp. is and was at all relevant times a registered FCM located at One North End Ave., Suite 1201, New York. MBF has been continuously registered with the Commission as an FCM since December 16, 1987, and as a registered notice broker dealer since May 3, 2002.

### **IV. OTHER RELEVANT ENTITIES**

15. The CME Group, Inc. ("CMEG") is MBF's designated self-regulatory organization ("DSRO"). The CMEG completed its acquisition of NYMEX Holdings, Inc. ("NYMEX") in August 2008. Prior to that time, NYMEX was MBF's DSRO. NYMEX and the CMEG are collectively referred to as the CMEG herein. One function of a DSRO is to conduct periodic audits of its firms.

16. JP Morgan Chase Bank, N.A. (“JPMorgan”) is a national banking association chartered under the laws of the United States, with its principal business at 270 Park Avenue, New York, New York, 10017. JPMorgan is a subsidiary of JPMorgan Chase & Co. (“JPMC”) and a successor by merger to Chase Manhattan Bank (“Chase”).

## V. STATUTORY BACKGROUND

17. A futures commission merchant or “FCM” is defined in Section 1a(28) of the Act, as amended, to be codified at 7 U.S.C. § 1a(28), as any individual, association, partnership, corporation or trust that is engaged in soliciting or accepting orders for the purchase or sale of any commodity for future delivery and, “in or in connection with such solicitation or acceptance of orders, accepts any money, securities or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.” Under Section 4d(a) of the Act, as amended, to be codified at 7 U.S.C. § 6d(a), it is unlawful for any person to engage in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery futures unless the entity registers with the Commission as an FCM or introducing broker.

18. A designated self-regulatory organization or “DSRO” is defined in Regulation 1.3(ff)(2), 17 C.F.R. § 1.3(ff)(2) (2011), as a contract market or registered futures association delegated the responsibility for “monitoring and auditing” member FCMs “for compliance with the minimum financial and related reporting requirements of the self-regulatory organizations of which the futures commission merchant . . . is a member, and for receiving the financial reports necessitated by such minimum financial and related reporting requirements.”

19. Customer funds are defined in Regulation 1.3(gg), 17 C.F.R. § 1.3(gg) (2011), as “all money, securities, and property received by a futures commission merchant or by a clearing organization from, for, or on behalf of customers or options customers.”

20. Under Regulation 1.10(b), 17 C.F.R. § 1.10(b) (2011), an FCM must report its net capital position and other financial information, including a statement of its segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges, and a statement of secured amounts and funds held in separate accounts for foreign futures and options customers pursuant to Regulation 30.7. More specifically, under Regulation 1.10(b), with limited exception, FCMs must file monthly financial reports with the Commission through CFTC Form 1-FR-FCM, commonly known as a “Form 1-FR” or “financial report.” Pursuant to Regulation 1.32, 17 C.F.R. § 1.32 (2011), FCMs must also monitor and compute their segregation requirements and customer funds on deposit in segregated accounts on a daily basis and maintain copies of these reports, commonly known as a “daily segregation computation.”

## **VI. MBF’S FAILURE TO SEGREGATE CUSTOMER FUNDS**

### **A. Background - The MBF 253 Segregated Account with JPMorgan**

21. On August 15, 2007, MBF executed the Commodity Customer Segregated Bank Account Agreement (the “253 Agreement”) with JPMorgan for account number xxx0-253 (the “253 Seg Account”). In the 253 Agreement, JPMorgan agreed to establish and maintain on behalf of MBF one or more commodity customer segregated bank accounts as identified on Schedule 1 to that agreement. The 253 Agreement further stated that Schedule 1 would be amended to include additional account(s) only by written request from MBF.

22. Schedule 1 of the 253 Agreement identified only the 253 Seg Account. MBF and JPMorgan never amended the 253 Agreement to include the USG Fund Account or any other account.

23. The 253 Agreement explicitly recognized the requirement imposed under Regulation 1.20(a) that “customer funds be deposited under an account name which clearly identifies them as such and shows that they are segregated for the exclusive benefit of commodity or options customers as required by the Act and the rules and regulations thereunder.” It also recognized MBF’s obligation “to obtain and retain in accordance with Rule 1.31 under the Act a written acknowledgment from the bank . . . that the bank was informed that the customer funds deposited therein are those of commodity or option customers.”

24. Subsequently, MBF obtained a customer segregation acknowledgment letter for the 253 Seg Account. In that letter dated August 21, 2007, MBF advised JPMorgan that funds deposited in the 253 Seg Account “represent funds held exclusively for or on behalf of customers, which [MBF is] required to maintain in a separate account” pursuant to the Act and Regulations. An authorized representative of JPMorgan subsequently acknowledged and agreed to the terms of the customer segregation acknowledgment letter, and returned an executed copy of the letter to MBF. The August 21, 2007 customer segregation acknowledgment letter for the 253 Seg Account was never amended to include the USG Fund Account or any other account.

**B. By Depositing and Holding Customer Funds in the USG Fund Account, MBF Failed to Segregate Those Funds**

25. MBF opened the USG Fund Account on September 17, 2008. During the morning of September 17, 2008, MBF contacted JPMorgan about the possibility of opening a money market fund account. At approximately 11:00 a.m., and in response to MBF’s request for information, JPMorgan employees provided MBF with a prospectus, dated July 1, 2008 (the



“Prospectus”). The Prospectus covered twelve separate JPMorgan money market funds, including two in which MBF had expressed interest, the USG Fund and JP Morgan Prime Money Market Fund (the “Prime Fund”).

26. The Prospectus notified investors and potential investors of the procedure for redeeming money market fund shares. It stated that redemption requests for ten of the twelve funds, including the USG Fund, can take up to seven days, and under certain circumstances may be suspended beyond that. Specifically, the Prospectus stated:

Under normal circumstances, if a Fund receives your order before the Fund’s cut-off time, the Fund will make available to you the proceeds that same business day by wire. Otherwise, except as permitted by the federal securities laws, your redemption proceeds will be paid within seven days (one day for the JP Morgan Prime Money Market Fund and the JP Morgan Liquid Assets Money Market Fund) after the Fund receives the redemption order.

The Prospectus further notified investors that their ability to redeem shares and receive payment may be postponed for “more than seven days” when: (1) trading on the NYSE is restricted; (2) the NYSE is closed (other than weekend and holding closings); (3) federal securities laws permit; (4) the SEC has permitted suspension; or (5) an emergency exists, as determined by the SEC.

27. MBF’s controller was responsible for reviewing the Prospectus on behalf of MBF, but did not review the redemption requirements. In fact, no one at MBF reviewed the redemption requirements described in paragraph 26 before MBF opened the USG Fund Account.

28. At 12:20 p.m. on September 17, 2008, within hours of first contacting JPMorgan about a money market fund account, MBF’s controller sent an email to MBF’s president requesting that he review the USG Fund and Prime Fund. He also informed MBF’s president that JPMorgan was calling him that day about the “ability to invest” in the USG Fund.

29. On September 17, 2008, officers and/or employees of MBF had at least two telephone conversations with employees of JPMorgan regarding the USG Fund.

30. That same day, MBF completed the account opening process for the USG Fund Account. In the account application, MBF identified the "NAME OF ACCOUNT/INSTITUTION" as "MBF Clearing Corp." In the section titled "PURCHASE/REDEMPTION INSTRUCTIONS," MBF instructed JPMorgan to use the 253 Seg Account to transfer funds into and from the USG Fund Account. MBF did not identify the USG Fund Account as an account that would hold customer funds.

31. Also on September 17, 2008, MBF transferred twenty million dollars (\$20,000,000) from JPMorgan customer segregation accounts into the USG Fund Account.

32. Beginning in September 2008 and continuing through February 2009, MBF received monthly account statements from JPMorgan for the USG Fund Account addressed to "MBF Clearing Corp." Underneath the account name, the statements included the following language: "Commodity Customer Segregated Bank / Account / MBF Clearin[g] Corporation." Beginning with the March 2009 monthly statement, the account statements changed. From that time through March 2010, MBF received monthly account statements from JPMorgan for the USG Fund Account addressed to "MBF Clearing Corp / Attn: [MBF's president]." From March 2009 through March 2010, nothing on the statements suggested that the account funds were segregated in any manner.

33. MBF closed the 253 Seg Account on or about March 25, 2009. On March 25, 2009, MBF requested that JPMorgan use the MBF Clearing Corp Customer Segregated Funds Account, account number xxxxx7614, with JPMorgan (the "JPM 7614 Seg Account"), to transfer customer funds into and out of the USG Fund Account.

**C. The CFTC Limited Audit Revealed MBF's Failure To Segregate Customer Funds**

34. In March 2010, the Commission's Division of Clearing & Intermediary Oversight ("DCIO") conducted a limited audit of MBF that included an analysis of MBF's segregation of customer funds as of February 1, 2010.

35. That audit revealed that MBF had not titled the USG Fund Account as a customer segregated account and did not have a customer segregation acknowledgment letter from JPMorgan on file for the account. The audit also revealed that MBF had a deficiency in the amount of customer funds in segregation as of February 1, 2010 not counting the USG Fund. The DCIO audit team informed MBF of the preliminary limited audit findings on or about March 26, 2010.

36. As a result of the CFTC limited audit, MBF requested from JPMorgan, for the first time, a customer segregation acknowledgment letter for the USG Fund Account. Specifically, on Friday, March 26, 2010, more than eighteen months after MBF opened the account, MBF's controller sent JPMorgan a proposed customer segregation acknowledgment letter, dated September 5, 2008, for the USG Fund Account.

37. On March 29, 2010 (the next business day), JPMorgan informed MBF that it could not sign the proposed customer segregation acknowledgment letter because the USG Fund was not among the funds set up to comply with certain provisions of the Regulations regarding the redemption and payment of funds. On March 30, 2010, in an email received by MBF's CFO and controller, among others, JPMorgan informed MBF that its legal counsel confirmed that the USG Fund Account was not one of the "approved" money market funds for customer segregated accounts.

38. On or about March 29, 2010, MBF liquidated the USG Fund Account in its entirety and transferred the funds to the JPM 7614 Seg Account.

39. By a letter dated April 5, 2010, MBF notified the CMEG of a “possible deficiency” in the amount of segregated funds held on behalf of MBF’s customers pursuant to Regulation 1.12(h). By a second letter dated April 5, 2010, MBF provided a summary of MBF’s daily segregation computations for March 2010 that identified five days during that month with an adjusted deficiency in segregated funds “if these funds [in the USG Fund Account] are determined to not have been good segregated funds.”

40. MBF never obtained a customer segregation acknowledgment letter for the USG Fund Account at any time during the lifetime of that account.

41. The USG Fund Account was a non-segregated account, and all customer funds deposited therein during the lifetime of the account were in fact held as belonging to MBF, not MBF’s customers.

42. MBF earned approximately \$342,790 in interest income on funds in the USG Fund Account.

**D. MBF Had Deficiencies in the Amount of Customer Funds Held in Segregated Accounts**

43. MBF should not have included customer funds held in the USG Fund Account in its report of funds held in segregated accounts. MBF was under-segregated on approximately 322 business days between October 3, 2008 and March 26, 2010, not counting the USG Fund Account. The more egregious instances of under-segregation include the following:

- A. As of December 18, 2008, MBF was required to have \$86,206,611 of customer funds in segregation. MBF reported a total of \$118,569,370, which included \$75,000,000 held in the USG Fund Account. After excluding those funds, MBF was under-segregated by \$42,637,240 as of December 18, 2008;

- B. As of March 18, 2009, MBF was required to have \$87,411,993 of customer funds in segregation. MBF reported a total of \$116,400,933, which included \$75,000,000 held in the USG Fund Account. After excluding those funds, MBF was under-segregated by \$46,011,060 as of March 18, 2009;
- C. As of April 17, 2009, MBF was required to have \$76,205,707 of customer funds in segregation. MBF reported a total of \$103,497,695, which included \$90,400,000 held in the USG Fund Account. After excluding those funds, MBF was under-segregated by \$63,108,012 as of April 17, 2009; and
- D. As of May 18, 2009, MBF was required to have \$84,002,857 of customer funds in segregation. MBF reported a total of \$108,024,805, which included \$83,000,000 held in the USG Fund Account. After excluding those funds, MBF was under-segregated by \$58,978,052 as of May 18, 2009.
44. As of June 30, 2009, MBF was required to have \$89,827,639 of customer funds in segregation. In its Form 1-FR, MBF reported a total amount in segregation of \$111,954,839, which included \$37,800,000 held in the USG Fund Account. As discussed above, the \$37,800,000 held in the USG Fund Account should not have been included in MBF's report of funds held in segregated accounts. After excluding those funds, MBF was under-segregated by approximately \$15,672,800 as of June 30, 2009.

**E. MBF Failed to Obtain Customer Segregation Acknowledgment Letters for Certain Other Accounts During the Account Opening Process.**

45. In September 2007, MBF opened an account titled MBF Clearing Corp Customer Segregated Account, account number xxx-547-5, with BMO Harris Bank, N.A. (the "Harris 547-5 Seg Account") and began depositing customer funds into that account. MBF did not obtain a customer segregation acknowledgment letter for the Harris 547-5 Seg Account during the account opening process. In fact, MBF did not obtain a customer segregation acknowledgment letter for the Harris 547-5 Seg Account until March 15, 2010, approximately two and a half years after MBF opened that account.

46. In September 2008, MBF opened a Customer Omnibus Account, account number xBFCO, with Advantage Futures LLC (the "Advantage xBFCO Seg Account") and began



depositing customer funds into that account. MBF did not obtain a customer segregation acknowledgment letter for the Advantage xBFCO Seg Account during the account opening process. In fact, MBF did not obtain a customer segregation acknowledgment letter for the Advantage xBFCO Seg Account until March 15, 2009.

47. In January 2008, MBF opened an account titled MBF Clearing Corp Customer Segregated Funds Account, account number xxxxxx0984, with BMO Harris Bank, N.A. (the "Harris 0984 Seg Account") and began depositing customer funds into that account. MBF did not obtain a customer segregation acknowledgment letter for the Harris 0984 Seg Account during the account opening process. In fact, MBF did not obtain a customer segregation acknowledgment letter for the Harris 0894 Seg Account until March 29, 2010, over two years after MBF opened that account.

48. In May 2010, approximately five weeks after it closed the USG Fund Account, MBF opened a customer segregated account titled MBF Clearing Corp Customer Segregated Account, account number xxxxxx1546, with Signature Bank (the "Signature 1546 Seg Account") and began depositing customer funds into that account. MBF did not obtain a customer segregation acknowledgment letter for the Signature 1546 Seg Account during the account opening process. In fact, MBF did not obtain a customer segregation acknowledgment letter for the Signature 1546 Seg Account until at least September 20, 2010, approximately four months after MBF opened that account.

49. On November 10, 2010, MBF opened another customer segregated account, account number xxxxxx5347, with Signature Bank (the "Signature 5347 Seg Account") and began depositing customer funds into that account. MBF did not obtain a customer segregation acknowledgment letter for the Signature 5347 Seg Account during the account opening process.

In fact, MBF did not obtain a customer segregation acknowledgment letter for the Signature 5347 Seg Account until at least December 16, 2010, approximately six weeks after MBF opened that account.

50. In September 2001, MBF opened an account titled MBF Clearing Corp. Customer Segregated Funds, account number xx5609, with JPMorgan (the "JPM 5609 Seg Account") and began depositing customer funds into that account. Upon information and belief, MBF did not obtain a customer segregation acknowledgment letter for the JPM 5609 Seg Account at that time.

51. During a 2009 CMEG audit, MBF acknowledged that it had not maintained a customer segregation acknowledgment letter for the JPM 5609 Seg Account even though that account was still active. MBF indicated that it would obtain a new letter immediately. Approximately three months later, the CMEG audit team noted that as of September 1, 2009, MBF still had not obtained a letter for that account. In fact, MBF did not obtain a properly signed and dated customer segregation acknowledgment letter for the JPM 5609 Seg Account until June 14, 2010.

**F. MBF Failed to Maintain 30.7 Acknowledgment Letters for Certain Accounts**

52. During the time period beginning in or prior to February 2007 and continuing through April 2010, MBF also failed to obtain and maintain in its files acknowledgments of funds held in secured accounts on behalf of foreign customers for at least two accounts.

53. In January 2008, MBF opened an account titled MBF Clearing Corp. Secured 30.7 Account, account number xxx5483, with Harris (the "Harris 5483 account") and began depositing foreign customer funds into that account. However, MBF did not obtain a 30.7 acknowledgment letter for the Harris 5483 account until March 15, 2010; more than two years after MBF opened the account.

54. In February 2007, MBF opened an account titled MBF Clearing Corp BP CFTC 30.7, account number xxxxxx1002, with JPMorgan (the “JPM 1002 account”) and began depositing foreign customer funds into that account. However, MBF did not obtain a 30.7 acknowledgment letter for the JPM 1002 account until April 1, 2010; more than three years after MBF opened the account.

**G. MBF Incorrectly Included Customer Funds in the USG Fund Account as Segregated Funds on a Form 1-FR Filed with the Commission and in its Daily Segregated Computations**

55. Consistent with its obligations under Regulation 1.10(b), (d), 17 C.F.R. § 1.10(b), (d) (2011), MBF filed monthly Form 1-FRs with the Commission during all relevant times. The 1-FR forms include a “Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges.”

56. As discussed in paragraph 44, above, MBF was under-segregated by approximately \$15,672,800 as of June 30, 2009. MBF has yet to amend its Form 1-FR for the period ending June 30, 2009 to exclude funds held in the USG Fund Account from its report of funds in segregation.

57. Consistent with its obligation under Regulation 1.32, 17 C.F.R. § 1.32 (2011), MBF computed and maintained daily segregated computations during all relevant times. As discussed in paragraphs 43-44, above, MBF was under-segregated on approximately 322 business days between October 3, 2008 and March 26, 2010.

**H. MBF Failed to Diligently Supervise its Employees and Agents in Connection with the Maintenance of its Customer Accounts**

58. Beginning in at least 2007 and continuing until at least 2010, MBF did not have any written procedures or policies for opening customer segregated accounts.

59. Beginning in at least 2007 and continuing until at least 2010, MBF did not have any written procedures or policies requiring that customer funds be separately accounted for as required by the Act and Regulations.

60. Beginning in at least 2007 and continuing until at least 2010, MBF did not have any written procedures or policies mandating that customer funds be deposited under an account name that clearly identifies them as such and shows that they are segregated, and that MBF obtain a written acknowledgement from the depository as required by the Act and Regulations.

61. Beginning in at least 2007 and continuing until at least 2010, MBF did not have any written procedures or policies prohibiting the deposit of customer funds into a money market fund account where the fund was not legally obligated to redeem an interest by the next business day.

## **VII. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND COMMISSION REGULATIONS**

### **Count I**

#### **Violations of Section 4d(a)(2) of the Act and Regulations 1.20(a) and 1.26(a): MBF Failed to Segregate Customer Funds**

62. Paragraphs 1 through 61 are realleged and incorporated herein by reference.

63. Section 4d(a)(2) of the Act, as amended, to be codified at 7 U.S.C. § 6d(a)(2), makes it unlawful for an FCM to solicit or accept orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market unless such person shall treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer.

64. Regulation 1.20(a), 17 C.F.R. § 1.20(a) (2011), requires that all customer funds be separately accounted for and segregated as belonging to commodity or option customers and deposited under an account name which clearly identifies them as such and shows that they are segregated as required by the Act and Regulations.

65. Regulation 1.26(a), 17 C.F.R. § 1.26(a) (2011), further provides that FCMs who invest customer funds in money market funds must deposit those funds “under an account name which clearly shows that they belong to commodity or option customers and are segregated as required by the Act and this part.”

66. From September 17, 2008 through March 29, 2010, MBF failed to segregate customer funds by depositing and holding such funds in the USG Fund Account. By this conduct, MBF violated Section 4d(a)(2) of the Act, as amended, to be codified at 7 U.S.C. § 6d(a)(2), and Regulations 1.20(a) and 1.26(a), 17 C.F.R. §§ 1.20(a), 1.26(a) (2011).

67. Each and every day that MBF failed to segregate customer funds constitutes a separate and distinct violation of Section 4d(a)(2) of the Act, as amended, to be codified at 7 U.S.C. §6d(a)(2), and Regulations 1.20(a) and 1.26(a), 17 C.F.R. §§ 1.20(a), 1.26(a) (2011).

## **Count II**

### **Violation of Regulation 1.25(c)(5)(i): MBF Invested Customer Funds in a Non-Compliant Account and Failed to Retain Compliance Documentation**

68. Paragraphs 1 through 61 are realleged and incorporated herein by reference.

69. Regulation 1.25, 17 C.F.R. § 1.25 (2011), authorizes FCMs to invest customer funds in certain permitted investments, including money market funds, subject to certain terms and conditions. In the case of money market funds such as the USG Fund, the Regulations require that the fund “shall be legally obligated to redeem an interest and to make payment in



satisfaction thereof by the business day following a redemption request, and a futures commission merchant . . . shall retain documentation demonstrating compliance with this requirement.” Regulation 1.25(c)(5)(i), 17 C.F.R. § 1.25(c)(5)(i) (2011).

70. The USG Fund did not comply with the redemption requirements specified in Regulation 1.25(c)(5)(i), 17 C.F.R. § 1.25(c)(5)(i) (2011), in that JPMorgan did not have any obligation to redeem interest and make payment by the day following a redemption request. Consequently, MBF violated Regulation 1.25(c)(5)(i), 17 C.F.R. § 1.25(c)(5)(i) (2011).

71. MBF also failed to retain documentation demonstrating compliance with the redemption requirements in violation of Regulation 1.25(c)(5)(i), 17 C.F.R. § 1.25(c)(5)(i) (2011).

72. Each and every day that MBF deposited its customer funds into the USG Fund Account constitutes a separate and distinct violation of Regulation 1.25(c)(5)(i), 17 C.F.R. § 1.25(c)(5)(i) (2011).

### **Count III**

#### **Violation of Regulation 1.49(e)(1): MBF Failed to Maintain Sufficient Funds in Segregation**

73. Paragraphs 1 through 61 are realleged and incorporated herein by reference

74. Regulation 1.49(e)(1), 17 C.F.R. § 1.49(e)(1) (2011), requires that each FCM must, at the close of each business day, hold in segregated accounts on behalf of commodity customers sufficient United States dollars, held in the United States, to meet all United States dollar obligations.

75. MBF failed to maintain sufficient funds in segregation to cover its obligations to its customers for approximately 322 business days between October 3, 2008 and March 26, 2010. By this conduct, MBF violated Regulation 1.49(e)(1), 17 C.F.R. § 1.49(e)(1) (2011).

76. Each and every day that MBF held insufficient funds in segregated accounts on behalf of its customers constitutes a separate and distinct violation of Regulation 1.49(e)(1), 17 C.F.R. §1.49(e)(1) (2011).

#### **Count IV**

##### **Violation of Regulation 1.10(d)(1)(v): MBF Filed an Incorrect Form 1-FR**

77. Paragraphs 1 through 61 are realleged and incorporated herein by reference.

78. Regulation 1.10(d)(1)(v), 17 C.F.R. § 1.10(d)(1)(v) (2011), requires, in part, that an FCM must file a Form 1-FR that includes a “statement of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges.” Regulation 1.10(d)(1)(vi), 17 C.F.R. § 1.10(d)(1)(vi) (2011), further requires an FCM to submit “such further material information as may be necessary to make the required statements and schedules not misleading.”

79. In its Form 1-FR for the period ending on June 30, 2009, MBF incorrectly stated that it had a total amount in segregation of \$111,954,839. In fact, MBF had only \$74,154,839 in segregation. Thus, MBF filed an incorrect monthly Form 1-FR for the period ending June 30, 2009, and thus violated Regulation 1.10 (d)(1)(v), 17 C.F.R. § 1.10(d)(1)(v) (2011).

#### **Count V**

##### **Violation of Regulation 1.20(a): MBF Failed to Obtain and Maintain Customer Segregation Acknowledgment Letters**

80. Paragraphs 1 through 61 are realleged and incorporated herein by reference.

81. Regulation 1.20(a), 17 C.F.R. § 1.20(a) (2011), requires FCMs to obtain and retain in their files a written acknowledgement from each depository that the depository was informed that the customer funds deposited therein are those of commodity or option customers and are being held in accordance with the provisions of the Act and Regulation 1.20.

82. From at least 2007 through 2010, MBF failed to obtain and/or maintain in its files customer segregation acknowledgment letters for at least seven customer segregation accounts, namely: the USG Fund Account, the Harris 547-5 Seg Account, the Advantage xBFCO Seg Account, the Harris 0984 Seg Account, the Signature 1546 Seg Account, the Signature 5347 Seg Account, and the JPM 5609 Seg Account. By this conduct, MBF violated Regulation 1.20(a), 17 C.F.R. § 1.20(a) (2011).

83. Each and every day that MBF deposited its customer funds into an account for which it had not obtained and/or did not maintain in its files a customer segregation acknowledgment letter constitutes a separate and distinct violation of Regulation 1.20(a), 17 C.F.R. § 1.20(a) (2011).

#### **Count VI**

##### **Violation of Regulation 30.7(c)(2): MBF Failed to Obtain and Maintain Foreign Customer Acknowledgment Letters**

84. Paragraphs 1 through 61 are realleged and incorporated herein by reference.

85. Regulation 30.7(c)(2), 17 C.F.R. § 30.7(c)(2) (2011), requires FCMs to obtain and retain in their files a written acknowledgement from each depository that the depository was informed that the customer funds deposited therein are those of foreign futures and foreign options customers and are being held in accordance with the provisions of the Act and Regulation 30.7.

86. From at least 2007 through 2010, MBF failed to obtain and/or maintain 30.7 acknowledgment letters for at least two accounts, namely, the Harris 5483 account and the JPM 1002 account. By this conduct, MBF violated Regulation 30.7(c)(2), 17 C.F.R. § 30.7(c)(2) (2011).

87. Each and every day that MBF deposited its customer funds into any account for which it had not obtained and/or did not maintain a 30.7 acknowledgment letter constitutes a separate and distinct violation of Regulation 30.7(c)(2), 17 C.F.R. § 30.7(c)(2) (2011).

### **Count VII**

#### **Violation of Regulation 166.3: MBF Failed to Diligently Supervise**

88. Paragraphs 1 through 61 are realleged and incorporated herein by reference.

89. Regulation 166.3, 17 C.R.F. § 166.3 (2011), requires each Commission registrant, except an AP who has no supervisory duties, to diligently supervise the handling of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners officers, employees and agents relating to its business as a Commission registrant.

90. MBF failed to design and implement an adequate program of supervision to detect and deter violations of the Act and Commission Regulations, and failed to supervise its employees and agents in the handling of MBF customer funds and the opening and maintenance of segregated accounts. By this conduct, MBF violated Regulation 166.3, 17 C.F.R. § 166.3 (2011).

91. In the absence of an adequate supervisory structure and compliance program, each and every occasion that that MBF opened and maintained a customer funds account without full compliance with the Act, as amended, and/or Commission Regulations constitutes a separate and distinct violation of Regulation 166.3, 17 C.F.R. § 166.3 (2011).

## VIII. RELIEF REQUESTED

WHEREFORE, for the reasons stated above, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, as amended, to be codified at 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

A. Find that MBF violated Section 4d(a)(2) of the Act, as amended, to be codified at 7 U.S.C. § 6d(a)(2), and Regulations 1.10(d)(1)(v), 1.20(a), 1.25(c)(5)(i), 1.26(a), 1.49(e)(1), 30.7(c)(2), and 166.3, 17 C.F.R. §§ 1.10(d)(1)(v), 1.20(a), 1.25(c)(5)(i), 1.26(a), 1.49(e)(1), 30.7(c)(2), and 166.3 (2011):

B. Enter an order of permanent injunction prohibiting MBF and any other person or entity associated with it, including any successor thereof, from engaging in conduct in violation of Section 4d(a)(2) of the Commodity Exchange Act, as amended, to be codified at 7 U.S.C. § 6d(a)(2), and Regulations 1.10(d)(1)(v), 1.20(a), 1.25(c)(5)(i), 1.49(e)(1), 30.7(c)(2), and 166.3, 17 C.F.R. §§ 1.10(d)(1)(v), 1.20(a), 1.25(c)(5)(i), 1.49(e)(1), 30.7(c)(2), and 166.3 (2011)

C. Enter an order directing MBF, and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues and profits derived, directly or indirectly, from acts or practices which constitute violations of the Act and Regulations as described herein, including pre-judgment interest thereon from the date of such violations;

D. Enter an order assessing a civil monetary penalty against MBF and any successors thereof, in the amount of the higher of \$130,000 for each violation of the Act or Regulations committed or triple the monetary gain to defendant for each violation of the Act or Regulations described herein occurring before October 23, 2008, and a civil monetary penalty in the amount of the higher of \$140,000 for each violation of the Act or Regulations committed or triple the



monetary gain to each Defendant for each violation of the Act or Regulations described herein occurring on or after October 23, 2008, plus post-judgment interest;

E. Enter an order requiring MBF, and any successors thereof, to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and

F. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Date: March 13, 2012

Respectfully submitted,

U.S. Commodity Futures Trading Commission

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