

Hearing Date: January 31, 2013 at 3:00 p.m. (Prevailing Eastern Time)  
Response Deadline: January 22, 2013 at 4:00 p.m. (Prevailing Eastern Time)

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

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

In re

MF GLOBAL INC.,

Debtor.

Case No. 11-2790 (MG) SIPA

**NOTICE OF MOTION OF JAMES W. GIDDENS, SIPA TRUSTEE FOR THE  
LIQUIDATION OF MF GLOBAL INC., TO APPROVE FURTHER DISTRIBUTIONS  
TO FORMER COMMODITY FUTURES CUSTOMERS OF MF GLOBAL INC.**

**PLEASE TAKE NOTICE** that on December 21, 2012, James W. Giddens (the “Trustee”), as Trustee for the liquidation of the business of MF Global Inc. (“MFGI” or the “Debtor”), under the Securities Investor Protection Act (“SIPA”) of 1970, as amended 15 U.S.C. section 78aaa *et seq.*,<sup>1</sup> by and through his undersigned counsel, filed a motion (the “Motion”), pursuant to SIPA section 78fff-1(b), section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), and 17 C.F.R. sections 190.01 through 190.10 (the “Part 190 Regulations”), for entry of an order (the “Order”) approving further distributions to former commodity futures customers of MFGI with allowed and finalized claims.

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1. For convenience, subsequent references to SIPA will omit “15 U.S.C.”

**PLEASE TAKE FURTHER NOTICE** that a hearing on the Motion will be held before the Honorable Martin Glenn, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, Courtroom 501, One Bowling Green, New York, New York, 10004 (the “Bankruptcy Court”), on **January 31, 2013 at 3:00 p.m.** (Prevailing Eastern Time) or as soon thereafter as counsel may be heard (the “Hearing”).

**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 Filing System, and by all other parties in interest, on a 3.5 inch disk, compact disk, or flash drive, preferably in Portable Document Format (PDF), WordPerfect or any other Windows-based word processing format no later than **January 22, 2013 at 4:00 p.m.** (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 Meaghan C. Gragg, Esq.; (b) the Securities Investor Protection Corporation, 805 Fifteenth Street, N.W., Suite 800, Washington, D.C., 20005, Attn: Josephine Wang, Esq. and Christopher H. LaRosa, Esq.; and (c) the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street N.W., Washington, D.C., 20581, Attn: Martin B. White, Esq., with a courtesy copy to the chambers of the Honorable Martin Glenn, United States Bankruptcy Court, Courtroom 501, One Bowling Green, New York, New York, 10004.

**PLEASE TAKE FURTHER NOTICE** that objecting parties are required to attend the Hearing, and failure to appear may result in relief being granted or denied upon default.

Dated: New York, New York  
December 21, 2012

HUGHES HUBBARD & REED LLP

By: /s/ James B. Kobak, Jr.  
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Attorneys for James W. Giddens, Trustee for  
the SIPA Liquidation of MF Global Inc.

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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

**MOTION OF JAMES W. GIDDENS, SIPA TRUSTEE FOR THE LIQUIDATION  
OF MF GLOBAL INC., TO APPROVE FURTHER DISTRIBUTIONS TO  
FORMER COMMODITY FUTURES CUSTOMERS OF MF GLOBAL INC.**

James W. Giddens (the “Trustee”), as Trustee for the liquidation of the business of MF Global Inc. (“MFGI”) under the Securities Investor Protection Act of 1970, as amended (“SIPA”), 15 U.S.C. section 78aaa *et seq.*,<sup>1</sup> by and through his undersigned counsel, hereby submits this Motion to Approve Further Distributions to Former Commodity Futures Customers of MF Global Inc. (the “Motion”), pursuant to SIPA section 78fff-1(b), section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), and 17 C.F.R. sections 190.01 through 190.10 (the “Part 190 Regulations”). By the Motion, the Trustee seeks the Court’s approval to make further distributions to all remaining non-affiliate commodity futures customers with

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allowed and finalized claims from the separate funds of 4d and 30.7 MFGI commodity futures customer property. In support of the Motion, the Trustee respectfully states as follows:

**PRELIMINARY STATEMENT**

1. The Trustee seeks authority to make further distributions to all remaining commodity futures customers with allowed and finalized claims from the separate funds of 4d and 30.7 MFGI commodity futures customer property,<sup>2</sup> up to the extent of available customer property in each fund, less reserves. Near-term distributions will be made available from customer property now in the Trustee's possession, and future distributions will be from customer property recovered or returned in the future, and such other property as may in the future be allocated to customer property by order of the Court, net of reserves as deemed prudent by the Trustee.

2. As reported in the Trustee's Second Six Month Interim Report for the Period June 5, 2012 through December 4, 2012 (ECF No. 4763), the Trustee has been resolving claims and issues with affiliate and non-affiliate claimants, while maintaining appropriate reserves. As of the date of this Motion, the Trustee has entered into agreements with both the trustee for MF Global Holdings Ltd. and its affiliated debtors and the joint special administrators for MF Global UK Ltd., as reflected and further described in the contemporaneous filings made with the Court. Accordingly, the Trustee believes it is prudent to seek the Court's authority to

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2. Claims of the delivery class customers are already being satisfied in full.

make further distributions of customer property at this time so that distributions, to the extent possible, may proceed as promptly as possible.<sup>3</sup>

3. The Trustee will, within ten days of the date of the hearing on the Motion, file with the Court a supplemental schedule listing the disputed customer claims as of that date, and the reserve amounts the Trustee will maintain for those claims.

### **BACKGROUND**

4. On October 31, 2011 (the “Filing Date”), the Honorable Paul A. Engelmayer, United States District Court Judge for the Southern District of New York, entered an order (the “MFGI Liquidation Order”) commencing the liquidation of MFGI pursuant to the provisions of SIPA in the case captioned *Securities Investor Protection Corp. v. MF Global Inc.*, Case No. 11-CIV-7750 (PAE). The MFGI Liquidation Order, *inter alia*: (i) appointed James W. Giddens as Trustee for the liquidation of the business of MFGI pursuant to SIPA section 78eee(b)(3), and (ii) removed the case to this Court as required for SIPA cases by SIPA section 78eee(b)(4) (the “SIPA Proceeding”).

5. Immediately upon entry of the MFGI Liquidation Order, the Trustee began work in furtherance of his statutory mandate to promptly satisfy customer claims, through a combination of Court-approved bulk transfers of open commodity futures transactions and associated clearing-level margin to transferee firms, and the administration of Court-approved expedited parallel customer claims processes and interim distribution to commodity futures customers with allowed and finalized claims.

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3. The Trustee also intends to implement distributions to securities customers of MFGI from the fund of securities customer property in accordance with SIPA as promptly as possible. Under current facts and circumstances, SIPA allows the Trustee to implement those securities customer distributions without further order of the Court.

6. In November 2011, within days of the commencement of this liquidation and ahead of the expedited parallel claims processes, the Trustee began transferring commodity futures customer property in accordance with 17 C.F.R. section 190.06 through three Court-approved bulk transfers to other futures commission merchants (“FCMs”) of certain open commodity futures contracts and partial collateral.<sup>4</sup> To date, the Trustee has distributed or transferred approximately \$4 billion in customer margin on a pro rata basis to former MFGI commodity futures customers through these bulk transfers.

7. In December 2011, while effecting the bulk transfers, the Trustee began administering commodity futures customer claims and securities customer claims in accordance with the Court-approved expedited parallel claims processes.<sup>5</sup> The bar date for all commodity customer claims and those securities customer claims seeking maximum protection under SIPA was January 31, 2012. The Trustee has now substantially completed the parallel customer claims processes, having determined virtually all customer claims, with over ninety-nine percent of those claims having become final.<sup>6</sup>

8. In April 2012, the Trustee began a Court-approved interim distribution to former commodity futures customers of a pro rata percentage of each customer’s allowed claim.<sup>7</sup> To date, the Trustee has distributed approximately eighty percent of the account values to 4d

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4. The Court approved the first bulk transfer by Order dated November 2, 2011 (ECF No. 14); the Court approved the second bulk transfer by Order dated November 17, 2011 (ECF No. 316); and the Court approved the third bulk transfer by Order dated December 12, 2011 (ECF No 717).

5. The Court’s Order of November 23, 2011 approved, among other things, the forms and procedures for filing, determining, and adjudicating claims. (ECF No. 423.)

6. A claim becomes final once the period to object to the Trustee’s determination of the claim has expired and/or the claimant has executed and returned a release form.

7. The Court approved the first interim distribution by Order dated April 26, 2012. (ECF No. 1450.)

customers with allowed and finalized claims, approximately five percent of the account values to 30.7 customers with allowed and finalized claims, and the complete value of accounts of customers with allowed and finalized claims to the delivery account class.

### **JURISDICTION AND VENUE**

9. Following removal to this Court for all purposes as required for SIPA cases by section 78eee(b)(4) of SIPA, 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.” 15 U.S.C. § 78eee(b)(4).

10. Venue is proper in this Court pursuant to SIPA section 78eee(a)(3) and 15 U.S.C. section 78aa.

### **RELIEF REQUESTED**

11. By this Motion, the Trustee respectfully seeks an Order of the Court, in the form attached hereto as Exhibit A, approving the relief requested herein, in the following manner, pursuant to SIPA section 78fff-1(b), Bankruptcy Code section 105(a), and the Part 190 Regulations of the Commodity Futures Trading Commission (“CFTC”) applicable to this SIPA Proceeding.

12. The Trustee seeks authority to make direct distributions to all remaining non-affiliate commodity futures customers who timely filed claims and have agreed to the Trustee’s determinations of their claims, from the separate funds of 4d and 30.7 MFGI commodity futures customer property, up to the extent of available customer property in each fund, less reserves, including customer property now in the Trustee’s possession, customer property recovered or returned in the future, and such other property as may in the future be

allocated to customer property by order of the Court, net of reserves as deemed prudent by the Trustee.<sup>8</sup>

13. Customers who object to any aspect of the Trustee's determination of their claims will still be afforded their due process rights to have this Court hear their objections when the dispute cannot be resolved by mutual agreement without judicial intervention. Ultimately, upon final resolution of a disputed claim, either by judicial order or negotiation, these claimants have been and will still be entitled to receive their pro rata share of the proposed distributions. Distributions will account for any property that customers have already received through the bulk transfer process or the first Court-approved interim distribution.

14. SIPC has authorized the undersigned to state that SIPC approves the relief requested in this Motion.

15. All property in the commodity futures customer estate has been reduced to cash; accordingly, former commodity futures customers of MFGI will receive their distributions in the form of checks, on a rolling basis, in the same manner as they received their pro rata share of the Court-approved first interim distribution.

#### **BASIS FOR RELIEF REQUESTED**

16. Where, as here, an FCM is liquidated under SIPA, SIPA imposes all of the duties of a trustee under the commodity broker liquidation provisions of chapter 7 of the Bankruptcy Code (11 U.S.C. §§ 761–767, the “Commodity Broker Liquidation Provisions”), to the extent consistent with SIPA, except for the duty to liquidate securities positions held in the

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8. The Trustee will, within ten days of the date of the Hearing, file with the Court a supplemental schedule listing the disputed customer claims as of that date, and the reserve amounts the Trustee will maintain for those claims.

debtor's estate. SIPA § 78fff-1(b). The Commodity Exchange Act and the regulations promulgated by the CFTC thereunder set forth different segregation requirements based on the type of trading that a customer was undertaking through the commodity broker (*e.g.*, trading futures and options on futures in U.S. contract markets versus trading futures and options on futures in foreign contract markets); a trustee under the Bankruptcy Code's Commodity Broker Liquidation Provisions has a duty to allocate and distribute customer property under these rules. 17 C.F.R. § 190.08. Pursuant to the Part 190 Regulations, and consistent with SIPA, a trustee liquidating a commodity broker has a duty to seek and to effect the transfer of open customer contracts and equity. 17 C.F.R. § 190.02(e)(1); *see also* 1-12 Collier on Bankruptcy ¶¶ 12.02[2]; 12.06[1] (16th ed. 2012). Subsequently to administering the bulk transfers, the Trustee must administer a customer claims process, liquidate remaining property, and distribute customer property. *See* 17 C.F.R. §§ 190.02(b), 190.02(f), 190.08. Pursuant to 17 C.F.R. section 190.04(e)(2), a distribution such as the one proposed herein requires this Court's approval.

17. The distributions to commodity futures customers proposed in this Motion may be considered pro rata distributions pursuant to the plan set forth herein, made in accordance with 17 C.F.R. section 190.08(d)(5), and furthering the first Court-approved interim distribution to commodity futures customers with allowed and finalized claims.

18. The Court is empowered to grant the relief requested as to commodity futures customers under SIPA section 78fff-1(b), and section 105(a) of the Bankruptcy Code, which authorizes the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). In practice, section 105(a) of the Bankruptcy Code grants bankruptcy courts broad statutory authority to enforce the Bankruptcy Code's provisions either under the specific statutory language of the Bankruptcy

Code or under equitable doctrines. *See, e.g., In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994).

19. Thus, SIPA, the Bankruptcy Code, and the Part 190 Regulations recognize that, in appropriate cases such as this one, the Trustee may be given approval to effect the distributions of customer property to claimants who have received their claim determinations and have agreed to the Trustee's determinations, while protecting the public interest as a whole. The ongoing cooperation of SIPC and the CFTC will continue to play a pivotal role in implementing the relief requested.

### **CONCLUSION**

WHEREFORE, the Trustee respectfully requests that this Court enter an Order, in the form attached hereto as Exhibit A, and grant the Trustee such other and further relief as is just and proper.

Dated: New York, New York  
December 21, 2012

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. 11-2790 (MG) SIPA

**[PROPOSED] ORDER GRANTING MOTION OF JAMES W. GIDDENS, SIPA  
TRUSTEE FOR THE LIQUIDATION OF MF GLOBAL INC., TO APPROVE  
FURTHER DISTRIBUTIONS TO FORMER COMMODITY  
FUTURES CUSTOMERS OF MF GLOBAL INC.**

Upon consideration of the Motion<sup>1</sup> dated December 21, 2012, of James W. Giddens (the “Trustee”), as Trustee for the liquidation of the business of MF Global Inc. (“MFGI” or the “Debtor”) under the Securities Investor Protection Act (“SIPA”), pursuant to SIPA section 78fff-1(b), section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), and 17 C.F.R. sections 190.01 through 190.10 (the “Part 190 Regulations”), for entry of an order approving further distributions to former commodity futures customers of MFGI with allowed and finalized claims; and the Court having jurisdiction to consider the Motion and relief requested therein pursuant to SIPA section 78eee(b)(4); and it appearing that due and proper notice of the Motion and the relief requested therein having been given, and no other further notice needing to be given; and SIPC supporting and approving the distributions as described in the Motion; and the Court having reviewed the Motion and determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein, to wit, that the distributions described in the Motion and set forth below will effectuate the terms and purpose of

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1. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

the Order of the District Court entered on October 31, 2011 commencing this liquidation of MFGI (the “MFGI Liquidation Order”), and are appropriate exercises of the Trustee’s authority pursuant to the MFGI Liquidation Order, SIPA section 78fff-1(b), Bankruptcy Code section 105(a), and the Part 190 Regulations; and after due deliberation and sufficient cause appearing therefore, it is hereby

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

ORDERED that, pursuant to SIPA section 78fff-1(b) and the Part 190 Regulations, the Trustee is authorized and shall use his best efforts to effect distributions to all remaining non-affiliate commodity futures customers who timely filed claims and have agreed to the Trustee’s determinations of their claims, from the separate funds of MFGI 4d and 30.7 commodity futures customer property, up to the extent of available customer property, now or hereafter, in each fund, net of reserves as deemed prudent by the Trustee; and it is further

ORDERED that the distributions contemplated by this Order are a necessary step to implement the MFGI Liquidation Order and the purposes of this SIPA Proceeding as described at the time of execution of the MFGI Liquidation Order; and it is further

ORDERED that the Trustee is authorized to execute, deliver, implement and fully perform any and all obligations, instruments, documents, and papers, and to take any and all actions reasonably necessary to consummate the distributions contemplated by this Order; and it is further

ORDERED that the Court shall retain exclusive jurisdiction to implement and enforce the provisions of this Order, including all disputes related to the distributions; and it is further

ORDERED that the failure to specifically include any particular provision in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court

that the Trustee's implementation of the distributions be approved in their entirety; and it is further

ORDERED that any stay of this Order provided by the Bankruptcy Rules or other applicable law shall not be applicable to this Order, and this Order shall be effective and enforceable immediately upon entry.

Dated: January \_\_, 2013  
New York, New York

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HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE