

EXPEDITED RELIEF REQUESTED

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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

**EXPEDITED MOTION OF JAMES W. GIDDENS, TRUSTEE FOR THE
LIQUIDATION OF MF GLOBAL INC., FOR AN ORDER APPROVING FURTHER
EMERGENCY TRANSFERS AND DISTRIBUTIONS TO CUSTOMERS**

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. § 78aaa *et seq.*, by and through his undersigned counsel, respectfully makes this expedited motion (the “Expedited Motion”), pursuant to SIPA section 78fff-1(b), sections 105(a), 764, and 766(c) of title 11 of the United States Code (the “Bankruptcy Code”), and 17 C.F.R. §§ 190.01 through 190.10 (the “Part 190 Regulations”), for entry of an order approving the transfer and distribution to customers of cash of MFGI’s commodity clients (“Customer Cash”) via other futures commission merchants (“FCMs”). In support of the Expedited Motion, the Trustee respectfully states as follows:

PRELIMINARY STATEMENT

1. Within hours of his appointment, the Trustee moved this Court for—and the Court granted—an Order Approving the Transfer of Certain Segregated Customer Commodity Positions (the “November 2 Bulk Transfer Order”) (ECF No. 14). At the time, former customers of MFGI faced the prospect of a forced, orderly liquidation of these positions, as did the markets generally.

2. Pursuant to the November 2 Bulk Transfer Order, the Trustee authorized the bulk transfer of approximately three million open commodity contracts and approximately \$1.5 billion in associated collateral, thus averting their forced liquidation.

3. Since that time, the Trustee, his staff, the Securities Investor Protection Corporation (“SIPC”), the Commodity Futures Trading Commission (“CFTC”), and others have been working around the clock to assess the Debtor’s books and records, and do all that is possible to return property to customers, consistent with the law and the records available to the Trustee.

4. In this connection, the Trustee now seeks, on an expedited basis, authority to return a sixty-percent distribution to those former MFGI customers that had only cash in their accounts as of the commencement of this proceeding on October 31, 2011 (the “Cash-Only Customers”)—as many as approximately 21,000 customers with a total of over \$869 million in cash, according to the books and records of MFGI.

5. The Trustee, in coordination with the United States Department of Justice, the CFTC and other regulators, and SIPC, continues to conduct a thorough, deliberate, and independent investigation of, among other things, the apparent shortfall in property that MFGI should have segregated for its customers prior to bankruptcy. That investigation continues around the clock. The extent of the apparent shortfall is not known at this time, but, aided by the

guarantee of the CME, the Trustee has determined that the extraordinary relief sought herein within three weeks of the filing date is prudent and consistent with the purpose of SIPA and the regulations of the CFTC to provide prompt but fair treatment to customers to the extent possible.

FACTUAL BACKGROUND

6. On October 31, 2011, the Honorable Paul A. Engelmayer, United States District Court for the Southern District of New York, entered an Order (the “MFGI Liquidation Order”) commencing 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).

7. The MFGI Liquidation Order, *inter alia*: (i) appointed James W. Giddens as Trustee for the liquidation of the business of MFGI pursuant to SIPA § 78eee(b)(3); (ii) appointed Hughes Hubbard & Reed LLP counsel to the Trustee pursuant to SIPA § 78eee(b)(3); and (iii) removed the case to this Court as required for SIPA cases by SIPA § 78eee(b)(4) (the “SIPA Proceeding”). (MFGI Liquidation Order ¶¶ II, IX.) The MFGI Liquidation Order specifically includes a provision authorizing the Trustee to “take other action as necessary and appropriate for the orderly transfer of customer accounts and related property,” (*id.* ¶ X), which provision SIPC specifically included in its application for MFGI’s liquidation for this purpose.

8. This Expedited Motion complements the November 2 Bulk Transfer Order and also will complement the expedited claims process that the Trustee has moved to establish by expedited application, filed today. The Trustee has evaluated whether the relief requested herein is appropriate to achieve the purposes of customer protection espoused by SIPA and the CFTC rules. With respect to approximately 15,000 customers, the Trustee has determined that a cash transfer of approximately \$520 million to customers through one or more transferee FCMs is appropriate and would significantly advance the equitable treatment of MFGI’s former futures customers. Approximately 6,000 other customers with small accounts also may be

accommodated by the transfer. At the outset, this figure represents a distribution of sixty percent of the total cash balances of the Cash-Only Customers.

9. The distribution covered by this application will be based upon the books and records of MFGI, with such reconciliation and other information as the Trustee and his professionals deem advisable. At the same time, as part of the expedited claims process,¹ all former customers of MFGI will be requested to submit a claim. In compliance with the expedited claims process, the Trustee will determine their final *pro rata* share of the customer property—and will, as promptly as is practicable and prudent, true up any difference as between the net equity of recipients (taking into account the amounts transferred as part of the November 2 Bulk Transfer Order) and, if the instant motion is granted, the amounts to be transferred as part of the relief requested herein (the “Trueing Up”). The Trustee expects to be able to make one or more additional interim distributions as part of the expedited claims process, with the goal of ensuring equal treatment of all of MFGI’s customers in advance of the final determination of the *pro rata* share to which they are each entitled.

10. While the Trustee is still investigating the reasons for and extent of the apparent shortfall in customer segregated property, he believes that the proposed distribution of approximately sixty percent is prudent and will not result in over-payments. In addition, the Chicago Mercantile Exchange Group, Inc. (“CME”) has agreed to continue cooperating in these transfers, including providing accountings and other assistance already. Moreover, the CME has proposed to provide a \$250,000,000.00 guarantee (the “CME Guarantee”) to the estate to provide

1. The Trustee’s expedited application for an expedited claims process (ECF No. 144) is pending before the Court, to be heard on November 16, 2011.

security for the nonrecovery of potential overpayments (should it ultimately be determined that these initial bulk transfers and distributions have led to a customer receiving more than a *pro rata* share of the final distribution). The Trustee and CME continue to discuss the details of the CME Guarantee, which will apply to the relief requested herein. This constructive commitment from the CME has given the Trustee additional assurance that a distribution of this magnitude is prudent and in the best interests of customers and the markets generally.

11. SIPC approves the relief described in this Expedited Motion.

JURISDICTION & VENUE

12. Following removal to this Court, 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).

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

RELIEF REQUESTED

14. By this Expedited Motion, the Trustee respectfully seeks an Order of the Court, in the form attached hereto, approving the relief requested herein, in the following manner, under the Bankruptcy Code and the Part 190 Regulations, and providing that such transfer may not be avoided under Bankruptcy Code section 764(b):

- (a) The Trustee is authorized and shall use his best efforts to complete this transfer and distribution through the CME to qualified FCMs that have agreed to accept such Customer Cash.

- (b) The Trustee is authorized to use the assistance of the CME, and any other registered DCOs that agree to facilitate the transfers and distributions outlined in this motion. This order is predicated on the CME’s commitment to

guarantee against overpayments to some or all customers in an amount up to \$250 million.

(c) The CME and any other DCOs facilitating the relief requested in this Expedited Motion (collectively, the “Facilitating DCOs”) are hereby authorized to consummate the transactions outlined in this motion to the Transferees, and to take all other actions reasonably necessary in furtherance thereof, as directed by the Trustee, and shall have no liability for any actions taken in furtherance of this order consistent with and in accordance with applicable law. The automatic stay is vacated to the extent necessary to allow the Facilitating DCOs to take any of the actions set forth in this paragraph.

BASIS FOR RELIEF REQUESTED

15. 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,² to the extent consistent with SIPA, except for the duty to liquidate securities positions held in the debtor’s estate. 15 U.S.C. § 78fff-1(b). The CEA and the regulations promulgated by the CFTC thereunder set forth different segregation requirements based on the type of account that a customer has with the commodity broker (*e.g.*, an account for futures and options on futures traded on U.S. contract markets versus an account for futures and options on futures traded on foreign contract markets), and 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 CFTC rules, and consistent with SIPA, a

2. The Bankruptcy Code’s commodity broker liquidation provisions are found in 11 U.S.C. §§ 761-767.

trustee liquidating a commodity broker has a duty to make immediate and best efforts to effect the transfer of open customer contracts and equity. 17 C.F.R. § 190.02(e)(1), referencing 17 C.F.R. § 190.06(e) and (f); *see also* 1 Collier on Bankruptcy ¶¶ 12.02[2] and 12.06[2].

16. The Part 190 Regulations permit the CFTC, in appropriate cases and to protect the public interest, to authorize such transfers as it has here. *See* 17 C.F.R. § 190.06(h).

17. The transfers proposed in this Expedited Motion may be considered a partial distribution, pursuant to the plan set forth herein, made in accordance with 17 C.F.R. § 190.08(d)(5), to those customers who did not have property transferred as part of the November 2 Bulk Transfer Order. This partial distribution would be made as part of the Court-approved plan detailed in the expedited claims process, and, along with the CME Guarantee, provides opportunity for equalizing payment of net equity claims, and adequate security to the estate for potential nonrecovered overpayments to customers, if any.

18. Ultimately, the mechanism proposed by this Expedited Motion would be that the Trustee would provide cash to the Transferees, which—having accepted assignment of the accounts of MFGI’s former Cash-Only Customers—would fund those accounts with sixty percent of their Filing Date balances. The relief requested herein, coupled with the November 2 Bulk Transfer Order, allows nearly all of MFGI’s former customers to have unprecedented access to some portion of their positions and assets, in advance of the expedited determinations of the claims process.

19. The Court is empowered to grant this Expedited Motion, under SIPA section 78fff-2(f), 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 common law doctrines. *See Momentum Mfg. Corp. v. Employee Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994).

20. 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 immediate transfer of Customer Cash to one or more new FCMs to assist MFGI's former customers, and to protect the public interest as a whole, without preferring any of MFGI's customers at the expense of any others. The continued cooperation of SIPC and the CFTC and the commitments of the CME will continue to play a pivotal role in implementing such relief.

21. Much like the November 2 Bulk Transfer Order, the relief sought herein will result in the orderly and immediate return of substantial property to customers within a few weeks of the filing of one of the largest liquidation proceedings in history and will leave MFGI's commodity customers with more alternatives than they would have if these accounts were to remain untransferred and subject entirely to the expedited claims process.

CONCLUSION

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

Dated: New York, New York
November 15, 2011

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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 EXPEDITED MOTION OF JAMES W. GIDDENS,
TRUSTEE FOR THE LIQUIDATION OF MF GLOBAL INC.,
FOR AN ORDER APPROVING FURTHER EMERGENCY
TRANSFERS AND DISTRIBUTIONS TO CUSTOMERS**

Upon consideration of the expedited motion (the “Expedited Motion”) of 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. § 78aaa *et seq.*, pursuant to SIPA section 78fff-1(b), sections 105(a), 764, and 766(c) of title 11 of the United States Code (the “Bankruptcy Code”), and 17 C.F.R. §§ 190.01 through 190.10 (the “Part 190 Regulations”), for entry of an order approving the transfer to other futures commission merchants (“FCMs”) of cash of MFGI’s commodity clients (“Customer Cash”); and the Court having jurisdiction to consider the Expedited Motion and relief requested therein pursuant to SIPA § 78eee(b)(4); and it appearing that due and proper notice of the Expedited Motion and the relief requested therein having been given, and no other further notice needing to be given; and SIPC supporting and approving the transfers and distributions as described in the Expedited Motion; and the Court having reviewed the Expedited Motion and determined that the legal and factual bases set forth in the Expedited Motion establish just cause for the relief granted herein, to wit, that the transfers and distributions described in the Expedited Motion and set forth below will effectuate the terms and purpose of the Order of the District Court entered on October

31, 2011 commencing this liquidation (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 sections 105(a), 764, and 766(c), and the Part 190 Regulations; and after due deliberation and sufficient cause appearing therefore, it is hereby

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

ORDERED that, under SIPA section 78fff-1(b), Bankruptcy Code section 766(c) and the Part 190 Regulations, the Trustee is authorized and shall use his best efforts to complete (a) the transfers and distributions to qualified FCMs that have agreed to accept such Customer Cash (the “Transferees”) for the benefit of MFGI’s commodities futures customers and (b) the Trueing Up described in the Expedited Motion; and it is further

ORDERED that the Trustee—upon advice and approval of SIPC—will seek and may use the assistance of the Chicago Mercantile Exchange, and other registered derivatives clearing organizations (“DCOs”) that agree to facilitate the transfers (collectively, the “Facilitating DCOs”), and the Facilitating DCOs will cooperate in the transfers, including providing accountings and other assistance already and continuing to do so; and it is further

ORDERED that the transfers may not be avoided under Bankruptcy Code section 764(b); and it is further

ORDERED that the Facilitating DCOs are hereby authorized to consummate the transfers to the Transferees, and to take all other actions reasonably necessary in furtherance thereof to complete the transfers directed by the Trustee, and shall have no liability for any actions taken in furtherance of this order consistent with and in accordance with applicable law; and it is further

ORDERED that the automatic stay is vacated to the extent necessary to allow the Facilitating DCOs to take any of the actions described in the foregoing paragraph; and it is further

ORDERED that the completion of the transfers is a necessary step to implement the MFGI Liquidation Order and the purposes of this SIPA liquidation 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 transfers; 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 transfers; 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 transfers and 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: November __, 2011

Hon. Martin Glenn
United States Bankruptcy Judge