

MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, New York 10104
Telephone: (212) 468-8000
Facsimile: (212) 468-7900
Brett H. Miller
Lorenzo Marinuzzi
Melissa A. Hager
John A. Pintarelli

Counsel for Louis J. Freeh, Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re)
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MF GLOBAL Inc.) Case No. 11-2790 (MG) SIPA
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	Debtor.)
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**CHAPTER 11 TRUSTEE’S STATEMENT REGARDING MOTION OF
JAMES W. GIDDENS, SIPA TRUSTEE FOR LIQUIDATION OF
MF GLOBAL INC., TO APPROVE FIRST INTERIM DISTRIBUTION
FOR ALLOWED COMMODITY FUTURES CLAIMS**

Louis J. Freeh (the “Chapter 11 Trustee”), the chapter 11 trustee of MF Global Holdings Ltd. *et al.* (“Holdings Ltd.”), by and through his undersigned counsel, submits this response (the “Statement”) to the *Motion of James W. Giddens, SIPA Trustee (the “SIPA Trustee”) For Liquidation Of MF Global, Inc. (“MFGI”), To Approve First Interim Distribution For Allowed Commodity Futures Claim* [Docket No. 1086] (the “Distribution Motion”)¹. In support of his Statement, the Chapter 11 Trustee respectfully represents as follows:

PRELIMINARY STATEMENT

1. The Chapter 11 Trustee fully supports the SIPA Trustee’s efforts to distribute customer property as quickly as possible. However, the Distribution Motion raises a number of

¹ Defined terms used herein but not specifically defined herein, shall have the meaning ascribed to them in the Distribution Motion.

concerns for the Chapter 11 Trustee. First, the Distribution Motion does not provide an explanation of how such relief impacts each Property Pool (as defined herein below). For example, the SIPA Trustee fails to disclose even the most basic facts, such as the number and amount of the non-duplicative customer claims filed by Property Pool (the “Filed Claims”), the dollar amount of claims allowed as determined (subject to objection by customers) by Property Pool (the “Determined Claims”), the dollar amount of final, allowed claims by Property Pool (the “Allowed Claims”) and the exact distribution percentage for Allowed Claims.

2. Second, there appears to be a growing disconnect between the SIPA Trustee’s position on the amount of alleged “missing” customer property and what the facts support. The CME recently stated that the “missing” funds total \$500 million to \$600 million – still a substantial number, but significantly less than \$1.6 billion. It would be beneficial to the former customers of MFGI, the creditors of Holdings Ltd. and MFGI and the public as a whole for the SIPA Trustee to explain the difference and provide additional information and facts to support his calculation.

3. Finally, the Chapter 11 Trustee believes it is appropriate for the SIPA Trustee to provide updated information with respect to securities customer property (the “Securities Customer Property”). Affiliate customers have yet to receive any distributions on account of their claims against Securities Customer Property. The Chapter 11 Trustee fears that the lack of information with respect to a true-up distribution for affiliate customers portends the SIPA Trustee’s decision to focus his attention on non-affiliate, or public, futures customers, to the exclusion of affiliate customers.² Additional disclosure on this issue is warranted.

² See *First Sixty Day Report*, Appendix A, p. 5 (“The Trustee oversees the Securities Investor Protection Act (SIPA) liquidation of MF Global Inc., and his goal is to fulfill the SIPA mandate to satisfy public customer claims in an orderly and fair process.”).

4. The Chapter 11 Trustee oversees entities that are both customers and creditors of MFGI. However, the interests of all customers and creditors of MFGI are served by having updated information on the recovery of assets, the reconciliation of claims and the overall status of the liquidation of MFGI and understanding the potential impact of this information on their interests.

FACTUAL BACKGROUND

5. On November 2, 2011, November 17, 2011 and December 12, 2011, the Bankruptcy Court entered orders (collectively, the “Bulk Transfer Orders”) approving the bulk transfer of open commodity contracts, cash, cash equivalents and additional amounts of segregated funds (the “Bulk Transfers”) ³ to new futures commission merchants (“FCMs”) such that each customer would have received approximately 72% of the net liquidating value of each reconciled domestic account. The SIPA Trustee was also authorized to distribute, via bulk transfer, non-liquid assets, such as warehouse receipts, precious metal certificates, shipping certificates, and other certificates of title for commodities held by MFGI for its customers (“Physical Customer Property”) in the same 72% pro rata share.

6. On November 22, 2011, the Bankruptcy Court entered an order [Docket No. 423] (the “Customer Claim Order”) requiring the SIPA Trustee to file (a) interim reports pursuant to *15 U.S.C. § 7811(2)* every six months and (b) status reports every sixty days from entry of the order (each, a “Sixty Day Report”).

7. On December 12, 2011, the Bankruptcy Court entered an order authorizing the SIPA Trustee to sell, transfer and assign substantially all of MFGI’s non-affiliate securities customer accounts (the “Sale Order”) to Perrin, Holden & Davenport Capital Corp. (the “Purchaser”).

³ The SIPA Trustee has not disclosed whether any customer has received more than their “net equity” as a result of customer property received through the First Bulk Transfer, the Second Bulk Transfer and the Third Bulk Transfer.

8. On January 12, 2012, the SIPA Trustee filed his Sixty Day Report on Status of Liquidation [Docket No. 835] (the “First Sixty Day Report”).

9. On February 6, 2012, the SIPA Trustee filed his Preliminary Report on Status of His Investigation and Interim Status Report on Claims Process and Account Transfers [Docket No. 896] (the “Investigation Report”).

10. On March 2, 2012, the SIPA Trustee filed his Periodic Claims Processing Report [Docket No. 977] (the “Claims Report”).

STATEMENT

11. By the Distribution Motion, the SIPA Trustee has proposed to make an initial distribution (the “First Interim Distribution”) of the following customer property to holders of Allowed Claims:⁴

- a. Up to \$600 million of customer property that MFGI was required to segregate under Section 4d of the Commodity Exchange Act (the “4d Segregated Funds”);
- b. Approximately \$50 million in customer property held in foreign futures accounts where MFGI was required to maintain secured accounts under Rule 30.7 (the “30.7 Secured Funds”); and
- c. Approximately \$35 million of customer property to claimants with allowed claims for property within a domestic delivery class (“Delivery Funds,” and together with 4d Segregated Funds, 30.7 Secured Funds and Securities Customer Property, the “Property Pools”).

A. Disclosure of Additional Information Regarding the Property Pools

12. The Chapter 11 Trustee generally supports the swift and streamlined distribution of customer property to the customers, but believes that the SIPA Trustee should make additional disclosures of the facts and assumptions relied upon by him in formulating the proposed distribution. Here, the Distribution Motion is devoid of sufficient

⁴ The SIPA Trustee has not proposed to make a distribution of Securities Customer Property.

information necessary to determine it if is appropriate for the SIPA Trustee to make a distribution at this time.

13. The First Sixty Day Report, which was issued in January 2012, contained information relevant to the Distribution Motion, including (for each Property Pool) the estimated claims, assets marshaled/recovered, location of unrecovered assets, assets distributed through Bulk Transfers, assets remaining under SIPA Trustee's control and approximate distribution percentage. Subsequent reports issued by the SIPA Trustee, however, including the Investigation Report and the Claims Report, do not provide a comparable level of detail with respect to the Property Pools that was provided in the First Sixty Day Report. Such detailed information would be of interest to the Bankruptcy Court, the former customers of MFGI, the creditors of Holdings Ltd. and MFGI and to the public.

B. Reconciliation of Apparent Discrepancy With Respect to the Calculation of Missing Customer Funds

14. The lack of clear information relevant to the consideration of the Distribution Motion has led to the disparity between the SIPA Trustee's statements regarding customer assets and other information that is in the public domain. Full transparency regarding the scope and status of the MFGI liquidation is appropriate.

15. For example, the SIPA Trustee has stated that \$1.6 billion in customer assets are allegedly "missing." In contrast, the CME puts the total of "missing" customer funds at \$500 million to \$600 million, which is 62.5% less than \$1.6 billion. The SIPA Trustee is best placed to provide information to clear up this significant discrepancy, and appears to be in the best position to explain whether the \$1.6 billion in customer assets is actually "missing," or if such assets or some portion thereof have been identified and located but remain outside his control.

16. Similarly, the First Sixty Day Report states that the SIPA Trustee recovered \$63.55 million in 30.7 Secured Funds. According to the Distribution Motion, the SIPA Trustee expects to make a distribution of \$50 million and maintain a reserve of approximately \$40 million in 30.7 Secured Funds to address “potential disputes.” The logical inference is that the SIPA Trustee has recovered an additional \$26.45 million in 30.7 Secured Funds. Yet, the Distribution Motion lacks any details to explain the apparent augmentation of 30.7 Secured Funds. Such additional information would help to clarify the difference between what was reported in January and the amount of 30.7 Secured Funds apparently currently in the possession of the SIPA Trustee.

C. Reconciling Claims With Respect to Securities Customer Property

17. The Chapter 11 Trustee is also concerned about the apparent lack of progress with respect to Securities Customer Property. The SIPA Trustee has neither allowed nor made any distributions to affiliate-customers. The Chapter 11 Trustee understands that this analysis is time consuming, particularly given the size and complexity of this case. However, the Chapter 11 Trustee is concerned about the SIPA Trustee’s stated position that his duty is to return customer property to public customers. The Chapter 11 Trustee believes that the law makes no distinction between the duties the SIPA Trustee owes to affiliate and non-affiliate securities customers, except with respect to eligibility for a SIPC advance. *15 U.S.C. § 7811(2), 15 U.S.C. § 78fff-a(4)*.⁵ Regardless of any perceived disagreement concerning the SIPA Trustee’s duties, it is appropriate for the SIPA Trustee to provide updated information with respect to Securities Customer Property and the status of reconciling claims, including affiliate-customer claims.

⁵ In fact, the SIPA Trustee also owes a duty to creditors of MFGL. See *Kusch v. Mishkin (In re Adler Clearing Corp.)*, (95-08203, Adv. Proc. No. 95-9248A), 1998 Bank. LEXIS 1076, at *49-50 (Bankr. SDNY Aug. 24, 1998) *aff’d* 208 F.3d 202 (2d. Cir. 2000).

18. At this stage in the proceeding where the SIPA Trustee is seeking to make an interim distribution, it is critical for the SIPA Trustee to be more transparent about the general status of the case, his progress in collecting the assets of the estate, the status of the reconciliation of claims against the estate and other relevant information uncovered by his investigation.

19. Unambiguous disclosures by the SIPA Trustee regarding each distinct Property Pool would be an integral step in the direction of greater transparency. The information that would provide greater transparency includes: (a) revisions to the SIPA Trustee's initial projections for assets of, and claims against, each distinct Property Pool; (b) the total amount of Filed Claims by Property Pool; (c) a comparison of Filed Claims against the Determined Claims for each distinct Property Pool (including the potential impact on estimated distributions), (d) a comparison of Filed Claims against the Allowed Claims for each distinct Property Pool (including the impact on estimated distributions), and (e) the progress that the SIPA Trustee has made in realizing estate assets (by distinct Property Pool including general estate assets).

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