UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
MF GLOBAL HOLDINGS LTD, *et al.*,	:	Case No. 11-15059 (MG)
Debtors.	:	(Jointly Administered)

OBJECTION OF SAPERE WEALTH MANAGEMENT LLC, GRANITE ASSET MANAGEMENT AND SAPERE CTA FUND, L.P. TO MOTION OF THE PLAN PROPONENTS FOR AN ORDER (I) APPROVING DISCLOSURE STATEMENT AND THE FORM AND MANNER OF NOTICE OF THE DISCLOSURE STATEMENT, (II) ESTABLISHING PROCEDURES FOR SOLICITATION AND TABULATION OF VOTES TO ACCEPT OR REJECT THE PLAN, (III) SCHEDULING HEARING ON CONFIRMATION OF THE PLAN, (IV) APPROVING RELATED NOTICE AND OBJECTION PROCEDURES, AND (V) APPROVING CERTAIN PRE-CONFIRMATION MATTERS

Sapere Wealth Management, LLC, Granite Asset Management and Sapere CTA Fund, L.P. (collectively, "Sapere") hereby objects to the Motion of the Plan Proponents for an Order (i) Approving Disclosure Statement and the Form and Manner of Notice of the Disclosure Statement, (ii) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, (iii) Scheduling Hearing on Confirmation of the Plan, (iv) Approving Related Notice and Objection Procedures, and (v) Approving Certain Pre-Confirmation Matters (the "Motion") submitted January 10, 2013 (ECF doc. no. 997). Sapere states as follows:

PRELIMINARY STATEMENT

On January 10, 2013, a group of creditors of MF Global Holdings Ltd. ("Holdings") and other entities within the MF Global Enterprise (the "Plan Proponents") filed a Motion for an Order (i) Approving Disclosure Statement and the Form and Manner of Notice of the Disclosure Statement, (ii) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, (iii) Scheduling Hearing on Confirmation of the Plan, (iv) Approving Related

Notice and Objection Procedures, and (v) Approving Certain Pre-Confirmation Matters (the "Motion") (ECF doc. no. 997); a Plan of Liquidation for MF Global Holdings Ltd., MF Global Finance USA Inc., and Their Debtor Affiliates (the "Proposed Plan") (ECF doc. no. 996); and a Disclosure Statement for the Plan of Liquidation for MF Global Holdings Ltd., MF Global Finance USA Inc., and Their Debtor Affiliates (the "Proposed Disclosure Statement") (ECF doc. no. 995). Pursuant to Federal Rule of Bankruptcy Procedure 3017(a), a hearing date was set for February 14, 2013 and an objection deadline was set at February 7, 2013.

Then, on February 2, 2013, the Plan Proponents and Counsel for the Chapter 11 Trustee filed a substantially amended reorganization plan (the "Joint Plan") (ECF doc. no. 1031) and a substantially amended disclosure statement (the "Joint Disclosure Statement") (ECF doc. no. 1029) without notice or reference to an extension of the hearing date or objection deadline. Accordingly, the newly submitted Joint Plan and Joint Disclosure Statement were set to be heard on 12 days' notice.

The Joint Disclosure Statement specifically identifies three matters to which Sapere is a party: Sapere's December 15, 2011 Motion to Direct the Debtors' Estates to be Administered pursuant to 11 U.S.C. § 761-767 and 17 C.F.R. § 190 (the "Priority Motion") (ECF doc. no. 279), a civil action pending in the Southern District of New York against former MF Global executives and employees and PricewaterhouseCoopers LLP (*DeAngelis v. Corzine et al.*, 11-cv-7866 (VM) (JCF)) (the "Civil Action") and Sapere's claim against Holdings' estate as a tort victim under common law and statutory principles, e.g., *respondeat superior* liability for acts and omissions of officers and agents.

A. Sapere's Priority Motion

On December 15, 2011, Sapere submitted a Motion to Direct the Debtors' Estates to be Administered pursuant to 11 U.S.C. § 761-767 and 17 C.F.R. § 190 (the "Priority Motion") (ECF doc. no. 279) Sapere argued that commodities customers are entitled to priority in the administration of Holdings' estate because Holdings exerted control over MFGI such that Holdings was a de facto commodities broker, that Holdings held itself out to be a commodities broker, and that CFTC regulations charge Holdings with adherence to the rules applicable to commodities brokers. In a February 1, 2012 Memorandum Opinion (ECF doc. no. 400), this Court denied Sapere's Priority Motion on the grounds that Holdings is not a commodities broker and that 11 U.S.C. § 761-767 and 17 C.F.R. § 190 are inapplicable in a Chapter 11 reorganization.

Sapere sought direct certification of an appeal to the 2nd Circuit, which this court denied on the grounds that its Memorandum Opinion was not a final order for purposes of appeal pursuant to 28 U.S.C. § 158. (ECF doc. no. 655) Sapere appealed that ruling to the District Court for the Southern District of New York, which agreed with this Court that the appealed order was not final for purposes of 28 U.S.C. § 158. Sapere appealed the district court's dismissal to the 2nd Circuit, where it is currently pending. If Sapere does not prevail on that appeal, then the priority issue will continue to be deemed non-final and will become final and appealable at a future circumstance.

B. Sapere's Civil Action

On December 18, 2012, Sapere filed its Amended Complaint against former MF Global executives and employees and PricewaterhouseCoopersLLP for tortious conduct under state and federal law including, among other things, common law torts, RICO violations, violations of the

Commodities Exchange Act, breaches of fiduciary duties, fraud, and other state law violations. Sapere's action is one of three actions currently in the Southern District of New York. The other two actions are class actions generally referred to as the Commodities Customer Class Action and the Securities Class Action. Sapere's claim asserts a right to compensatory and punitive damages for the unlawful acts that led to a $1.6 billion shortfall in customer funds.

C. Sapere's Claim Number 1481

On August 22, 2012, Sapere filed its proof of claim against Holdings (claim no. 1481). In it, Sapere asserts a right to $838,946,187.00 and a priority right to $93,216,187.00. As described in Attachment 1 to the proof of claim, the basis of Sapere's claim is for liability as a principal for Commodities Exchange Act violations as well as vicarious liability for the tortious conduct of the former executives of MF Global that Sapere has identified in its Civil Action. There has been no objection or dispute to Sapere's claim and it is presently allowed.

D. The Joint Plan and Joint Disclosure Statement

Exhibit V to the Joint Disclosure Statement outlines the assumptions upon which the Plan Proponents relied on in analyzing claims against the debtors' estates. There, the Plan Proponents write that Sapere's claim is "[a]ssumed disallowed if the 2nd Circuit appeal is lost." (Joint Disclosure Statement p. 152) This is not correct because that appeal does not address Sapere's claim as a tort victim; also, if the appeal is lost, the priority issue will not have been finally determined.

With regards to Sapere's Priority Motion, the Plan Proponents write, "Sapere also filed Claim 1481 against Holdings in the approximate amount of $932 million including an asserted priority claim of approximately $93.2 million. As Sapere's claim is the same in basis as the litigation denied by the District Court [Sapere's Priority Motion], for purposes of the Claims

analysis described in Section I.C.2 above, the Plan Proponents have reclassified the priority portion of the Sapere Claim and have disallowed the exemplary damages portion." (Joint Disclosure Statement p. 52)

Sapere objects to mischaracterizations and inadequate information included in the Joint Plan and Joint Disclosure Statement.

ARGUMENT

1. The Joint Disclosure Statement does not accurately reflect the amount of allowed claims against Holdings' estate.

The Plan Proponents ascribe a value of $0 to approximately $4 billion of what also appear to be tort claims asserted against Holdings and presently allowed, with either an incorrect basis for purportedly doing so or a wholly inadequate analysis of those claims' values. More specifically, the Joint Disclosure Statement incorrectly characterizes Sapere's claim as pertaining to only Sapere's Priority Motion and ignores Sapere's tort claim against the Debtor. Further, the Joint Disclosure Statement does not provide any basis for disallowing the remaining ~$3 billion in claims. In doing so, the Joint Disclosure Statement provides at best inadequate, and at worst downright incorrect, information regarding who is likely to share in a distribution to impaired claimants. Because the Joint Disclosure Statement does not properly characterize the claims against Holdings' estate, the Plan Proponents' Motion should be denied.

A. The Joint Disclosure Statement mischaracterizes Sapere's claim.

A disclosure statement that assumes the outcome of a contested litigation as a given does not provide adequate information. *See e.g., In re Dakota Rail, Inc.*, 104 B.R. 138, 149 (Bankr. D. Minn. 1989) (holding that a disclosure statement was misleading when a debtor took for granted

the fact that it would receive $50,000 in the settlement of a litigation that was vigorously contested).

In Exhibit IV to the Joint Disclosure Statement, the Plan Proponents write, "Assumed disallowed if the 2nd Circuit appeal is lost: Claim 1481 filed by Sapere CTA Fund, L.P. (for $932,162,430) discussed in detail in Section III.N.2 of the Disclosure Statement." (Joint Disclosure Statement p. 152) In Section III.N.2, the Plan Proponents write, "As Sapere's Claim is the same in basis as the litigation denied by the District Court [Sapere's Priority Motion], for purposes of the Claims analysis described in Section I.C.2 above, the Plan Proponents have estimated this claim at $0." (Joint Disclosure Statement p. 52) The characterization of Sapere's claim is incorrect, misleading, and sufficient basis for denying the Plan Proponent's Motion.

In this Court's April 25, 2012 Memorandum Opinion and Order Denying Request for Certification of Appeal (ECF doc. no. 655), this Court described Sapere's claim by writing:

> [I]n effect, Sapere was seeking a determination from the bankruptcy court at an early stage of the chapter 11 cases that commodities customers of MF Global Inc. ("MFGI"), the wholly-owned subsidiary of MFGH, would receive a priority in any distributions from the chapter 11 estate over other creditors of the chapter 11 debtors.

Conversely, Sapere's claim against Holdings' estate pertains not only to its Priority Motion and appeal but also as a tort claimant creditor. In Attachment 1 to Sapere's claim, Sapere identifies several bases for its claim against Holdings' estate including principal liability for violations of the Commodities Exchange Act and vicarious liability for CEA violations and other tortious conduct. To be clear, Sapere's tort claim is distinct from its Priority Motion. The Plan Proponents confound the two matters, which renders the Joint Disclosure Statement misleading.

The Plan Proponents' incorrect characterization that Sapere's claim is based on a matter that has already been heard and rejected by both this Court and the district court provides incorrect and inadequate information as to Sapere's potential stake in the Holdings estate. It discredits Sapere's likelihood of recovery and provides an inaccurate picture of those who may eventually share in available assets. As the Joint Disclosure Statement is currently written, creditors will vote on the Joint Plan under the belief that Sapere's claim has already been denied by this Court and the district court when Sapere's claim is based on an issues that have never appeared before this Court. Because the Plan Proponents do not provide correct information as to the basis for Sapere's claim, creditors are deprived of adequate information and the Plan Proponents' Motion should be denied.

B. The Joint Plan improperly denies Commodities Customers priority status, which results in an inaccurate and misleading Feasibility Analysis and Net Estimated Recovery in the Joint Disclosure Statement.

Sapere objects to the Joint Plan because it denies commodities customers' priority treatment. This is improper for the reasons set forth in Sapere's Priority Motion. (ECF doc. no. 278) As discussed above, the Court denied Sapere's Priority Motion, which asked the Court to decide commodities customers' priority status, and has labeled Sapere's motion as premature. Sapere thus renews its request to the Court.

Further, it would be fundamentally unfair to commodities customers for the Court to deny commodities customers' priority without adequate discovery. As disclosed by Magistrate Judge Francis at the status conference of *In Re: MF Global Investment Litigation* on January 23, 2013, this Court conferred with Judge Marrero and Judge Francis and, as a result, advised the parties to proceed to mediation and to stay discovery for the purposes of engaging in mediation. Further, it

would be inequitable to deny commodities customers' priority without review of the information in possession of the Chapter 11 Trustee. This includes the documents and emails of the MF Global executives Jon Corzine, Henri Steenkamp, Laurie Ferber, and others. The SIPA Trustee has stated publicly that the Chapter 11 Trustee is in possession of the key information related to *In Re: MF Global Investment Litigation.* This Court has also ruled that the proper forum for discovery is in the *In Re: MF Global Investment Litigation* in the Southern District of New York case before Judge Marrero and Magistrate Judge Francis. (*In re MF Global, Inc.*, Case no. 11-02790 (MG) (SIPA), ECF doc. no. 5325) Unless this Court now deems its April 25, 2012 Memorandum Opinion and Order (ECF doc. no. 655) to be final, we respectfully submit that this Court should not allow approval of the Joint Plan fashioned such that commodities customers are denied priority without allowing commodities customers the opportunity for adequate discovery and deciding commodities customer priority. Additionally, the denial of commodities customers' priority makes other portions of the Joint Plan improper. The Plan Proponent's unfounded assumption that Sapere's appeal will be lost paints an unrealistic picture of the state of Holdings' estate. The Joint Plan improperly defines Priority Non-Tax Claims in a manner that would exclude Sapere's priority right to $93,216,243 should Sapere's appeal be successful. As a corollary of ignoring Sapere's priority right, the Feasibility Analysis and Net Estimated Recoveries included in Exhibits II and VI, respectively, of the Joint Disclosure Statement create inaccurate and misleading projections.

For example, the Feasibility Analysis estimates Priority Non-Tax Claims at $700,000, with a total "Estimated Cash Needs at Effective Date" of $46.1 million. (Joint Disclosure Statement p. 136) If Sapere's appeal is successful, these numbers will, of course, be significantly higher, which will result in significantly less funds available to non-priority claimants.

The effect of the misrepresentation can be seen in Net Estimated Recoveries in Exhibit VI. As presented, the charts estimate a range of Estimated Net Recovery for general unsecured claims against Holdings' estate from 13.4% on the low end to 38.9% on the high end. (Joint Disclosure Statement p. 164-66) Sapere's priority claim would be entitled to payment before any such general unsecured claims receive anything, which significantly alters and lowers the Estimated Net Recovery for such claims. Accordingly, the Joint Disclosure Statement provides inadequate information as it presents a misleading Feasibility Analysis and Net Estimated Recovery analysis.

C. The Joint Disclosure Statement does not provide adequate information regarding the basis for disallowing nearly $4 billion in commodities customers' claims.

A disclosure statement that assumes the outcome of a contested litigation as a given does not provide adequate information. *See e.g., In re Feldman,* 53 B.R. 355, 358 (Bankr. S.D.N.Y. 1985) (holding that a disclosure statement did not provide adequate information when it did not include, among other things, issues and dollar amounts involved in pending litigation); *see also In re Dakota Rail, Inc.*, 104 B.R. 138, 149 (Bankr. D. Minn. 1989) (holding that a disclosure statement was misleading when a debtor took for granted the fact that it would receive $50,000 in the settlement of a litigation that was vigorously contested). Instead, a disclosure statement should provide an analysis of any disputes to allow creditors to evaluate the potential outcome such claims will have on ultimate recovery. *See e.g., In re Malek,* 35 B.R. 443 (Bankr. E.D. Mich. 1983) ("The Debtor is required, at a minimum, to provide a disclosure statement containing the following information . . . All pending or contemplated litigation of whatever nature must be described fully, completely, and in detail. Trial dates, where known, must be disclosed. Appeals, filed or contemplated, must be disclosed. The disclosure statement must

include a professional evaluation of the probable success of any pending or contemplated litigation.")

In the present situation, the Plan Proponents have assumed that approximately $4 billion in claims against Holdings' estate (including Sapere's claim) will be disallowed. The mere filing of proofs of claims is prima facie evidence as to the validity of such claims. F.R.B.P. 3001(f). If the Plan Proponents foresee the ultimate disallowance of these claims, they must provide some basis to allow creditors to evaluate that assertion. However, the Plan Proponents do not provide any analysis of these claims or their basis for disallowing them other than incredibly broad categorical groupings such as "Claims properly filed against MFGI" and "Claim properly filed against MFGI; guaranteed by Holdings Ltd. but assumed satisfied by MFGI." Although the Joint Disclosure Statement provides the broad waiver statement that "If the disputed claims are allowed in an amount greater than currently estimated, the Allowed Claims could exceed the Plan Proponents' current estimates set forth in the table in Section II.C.2 of this Disclosure statement," they offer no analysis whatsoever as to the merits of the disallowed claims, whether Holdings may be responsible for any portion of such claims, and how such claims could reasonably affect the aggregate of Allowed Claims if the Plan Proponents' predictions are incorrect. Instead, they simply wipe such claims clean to $0 or assume that they will be handled by other parties.

D. The Joint Plan and Joint Disclosure Statement improperly restrict creditors' rights to request estimation of disputed claims.

Article VII.B.5 of the Joint Plan states, "Prior to the Effective Date, the Plan Proponents, and from and after the Effective Date, the Plan Administrator, may request that the Bankruptcy Court estimate (a) any Disputed Claim pursuant to applicable law and (b) any contingent or

unliquidated Claim pursuant to applicable law . . .." This provision of the Joint Disclosure Statement improperly places such estimation requests within the sole discretion of the Plan Proponents or the Plan Administrator, whereas F.R.B.P. 3018(a) simply states "Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purposes of accepting or rejecting a plan." The Federal Rules do not leave that right solely in the hands of the Plan Proponents or the Plan Administrator.[1]

2. **The Joint Disclosure Statement and Joint Plan are procedurally deficient.**

On January 10, 2013, the Plan Proponents filed the Proposed Disclosure Statement (ECF doc. no. 995), Proposed Plan (ECF doc. no. 996), and the Motion (ECF doc. no. 997). A response deadline was set for February 7, 2013 with the hearing to take place on February 14, 2013. Then, on Saturday, February 2, 2013, the Plan Proponents and Counsel for the Chapter 11 Trustee of MF Global Holdings, Ltd. filed a substantially amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code (the "Joint Plan") (ECF doc. no. 1031) and a substantially amended Disclosure Statement for the Joint Plan (the "Joint Disclosure Statement") (ECF doc. no. 1029). Neither the Joint Plan nor the Joint Disclosure statement indicates an extension of the previously set objection or hearing dates.

Federal Rule of Bankruptcy Procedure 3017 requires that, "after a disclosure statement is filed in accordance with Rule 3016(b), the court shall hold a hearing on at least 28 days' notice . . . to consider the disclosure statement and any objections or modifications thereto." F.R.B.P.

[1] As an additional matter, Sapere notes that the Joint Plan and Joint Disclosure Statement should establish concrete estimation procedures to avoid a scenario in which, for example, this Joint Disclosure Statement is approved, the voting date is set, and then the eligible party formally objects to a claim (or many claims), thereby rendering such claimants ineligible to vote during the pendency of the claim determination process. *See e.g., In re Hydrox Chem. Co.*, 194 B.R. 617 (Bankr. N.D. Oh. 1996) (establishing a detailed procedure for estimating tort creditors' claims).

3017(a). The Joint Plan and Joint Disclosure Statement were filed without notice and without reference to an extension of the existing objection and hearing deadlines. In order to conform to F.R.B.P. 3017(a), the hearing on the Joint Disclosure Statement may not occur prior to March 4, 2013 with objections being due "at any time before the disclosure statement is approved or by an earlier date as the court may fix." F.R.B.P. 3017(a). Because the Plan Proponents did not adhere to F.R.B.P. 3017(a), this Court should deny the Plan Proponents' Motion.

CONCLUSION

For the foregoing reasons, the Court should deny the Motion of the Plan Proponents for an Order (i) Approving Disclosure Statement and the Form and Manner of Notice of the Disclosure Statement, (ii) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, (iii) Scheduling Hearing on Confirmation of the Plan, (iv) Approving Related Notice and Objection Procedures, and (v) Approving Certain Pre-Confirmation Matters.

The Court should also grant such other and further relief as is just and proper.

Dated: February 7, 2013
New York, New York

Respectfully submitted,

FORD MARRIN ESPOSITO WITMEYER & GLESER, L.L.P.
By: */s/ John J. Witmeyer III*
John J. Witmeyer III (JW 7442)
Jon R. Grabowski (JG 9845)
Ford Marrin Esposito Witmeyer & Gleser, L.L.P.
Wall Street Plaza
New York, New York 10005
Tel: (212) 269-4900
Fax: (212) 344-4294
Email: jjwitmeyer@fmew.com
jrgrabowski@fmew.com

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HOWARD, STALLINGS, FROM & HUTSON, P.A.
Joseph H. Stallings (JS 5065)
5410 Trinity Road, Suite 210 (27607)
P.O. Box 12347
Raleigh, North Carolina 27605
Tel: 919-821-7700
Fax: 919-821-7703
Email: jstallings@hsfh.com