Hearing Date & Time: January 19, 2012 @11:00 am
Objection Deadline: January 12, 2012 @ 4:00 pm

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

NOTICE OF HEARING ON MOTION BY SAPERE WEALTH MANAGEMENT, LLC, GRANITE ASSET MANAGEMENT AND SAPERE CTA FUND, L.P. TO DIRECT THE DEBTORS' ESTATE TO BE ADMINISTERED PURSUANT TO 11 U.S.C. §§ 761-767 AND 17 C.F.R. § 190

PLEASE TAKE NOTICE, that upon the annexed Motion and Exhibits, the undersigned counsel for Sapere Wealth Management, LLC, Granite Asset Management, and Sapere CTA Fund, L.P. (collectively, "Sapere") hereby move this Court for the entry of the proposed order annexed to the Motion directing the Debtors-in-Possession, their non-debtor subsidiaries and affiliates (collectively, "MF Global") and the bankruptcy Trustee to administer the Debtors' estates pursuant to 11 U.S.C. §§ 761-767 and 17 C.F.R. § 190 and applying those provisions throughout the future of these cases. The effect of this order will provide priority status to

commodities customers to the extent of their segregated accounts at MF Global, Inc. ("MFGI"), a subsidiary of Debtor MF Global Holdings, Ltd. ("Holdings").

PLEASE TAKE FURTHER NOTICE, that a hearing on this Motion will take place on **January 19, 2012 at 11:00 am** (Eastern Time), or as soon as thereafter as counsel can be heard, before the Honorable Martin Glenn, United States Bankruptcy Judge at United States Bankruptcy Court located at One Bowling Green, Room 501, New York, NY 10004-1408.

PLEASE TAKE FURTHER NOTICE, that any objections to the relief requested by this Motion must be electronically filed and served upon the undersigned counsel for Sapere on or before **January 12, 2012 at 4:00 pm** (Eastern Time) in accordance with the procedures set forth in this Court's Order and entered on December 12, 2011 at Docket No. 256 (the "Procedures Order").

PLEASE TAKE FURTHER NOTICE, that in the event no written responses or objections to this Motion are timely filed and served in accordance with the Procedures Order, the court may grant the relief requested by this Motion without any further notice or a hearing.

Dated: December 15, 2011
New York, New York

Respectfully submitted,

FORD MARRIN ESPOSITO WITMEYER & GLESER, L.L.P.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
MF GLOBAL HOLDINGS LTD., et al.,	:	Case No. 11-15059 (MG)
	:	Jointly Administered
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MOTION BY SAPERE WEALTH MANAGEMENT, LLC, GRANITE ASSET MANAGEMENT AND SAPERE CTA FUND, L.P. TO DIRECT THE DEBTORS' ESTATE TO BE ADMINISTERED PURSUANT TO 11 U.S.C. §§ 761-767 AND 17 C.F.R. § 190

Sapere Wealth Management, LLC, Granite Asset Management, and Sapere CTA Fund, L.P. (collectively, "Sapere") hereby move for an order directing the Debtors-in-Possession, their non-debtor subsidiaries and affiliates (collectively, "MF Global") and the bankruptcy Trustee to administer the Debtors' estates pursuant to 11 U.S.C. §§ 761-767 and 17 C.F.R. § 190 and applying those provisions throughout the future of these cases. The effect of this order will provide priority status to commodities customers to the extent of their segregated accounts at MF Global, Inc. ("MFGI"), a subsidiary of Debtor MF Global Holdings, Ltd. ("Holdings"). MFGI is presently in Securities Investor Protection ("SIPA") liquidation in this Court in related Case No. 11-2790 (MG) SIPA. This motion affects the overall administration of the Debtors' estate,

including decisions on issues affecting priority such as, but not limited to, Cash Collateral and Cash Management Orders.

It is appropriate to make this decision now because the issue of claimant priority can impact a variety of future decisions by various parties about the Debtors' estates and administering thereof. The Bankruptcy Code, including Section 105 (11 U.S.C. § 105), and 28 U.S.C. § 157(b)(1) & (2)(A), authorizes the bankruptcy court to issue any order necessary or appropriate to carry out the provisions of the Code and decide matters concerning the administration of a debtor's estate.

RELEVANT FACTS

This motion results from the actions of MF Global — the financial firm headed by former Goldman Sachs CEO and Co-Chairman, former New Jersey Governor and former US Senator Jon Corzine — which exercised dominion and control over millions (if not billions) of dollars in commodities customers' segregated account funds in October 2011 and earlier. MF Global did so, as reported by the press,[1] to facilitate highly risky transactions by Holdings, orchestrated by its more senior officials including Corzine, in multiple billions of Euro-denominated securities including off-balance-sheet repurchase-to-maturity transactions. The direct result has been that at least $600 million and up to $1.2 billion or more of segregated account funds of commodities customers have gone "missing," with the SIPA Liquidation Trustee having recently announced that he intends to stop transferring funds to segregated-account customers, leaving the possibility that segregated-account customers may never receive their full distributions.

MF Global had transformed the segregated-account customers into involuntary (and unknowing) participants in risky futures transactions against which the Dodd-Frank Act, the

[1] We have attached as Exhibit A some of the press reports. Unfortunately, the Debtors, their counsel and the SIPA Liquidation Trustee have made it a point of not putting factual information on the Court record.

Commodity Exchange Act and the CFTC rules were designed to protect.[2] Self-evidently, MF Global either never built or tore down the jural wall that should separate a Futures Commission Merchant ("FCM") from a non-registered parent that makes risky bets – putatively for its own account and without involving commodities customers – although positioned to control the FCM. MF Global cast aside or destroyed the wall, acting for the benefit of the parent (Holdings) while dragging along as involuntary participants the commodities customers whose segregated-account funds provided the means to effectuate the risky futures trades (apparently doing so off-the-books of the parent).

The downfall of MF Global ensued. On October 31, 2011, MF Global reported to the Securities & Exchange Commission ("SEC") and Commodities Futures Trading Commission ("CFTC") possible shortfalls in customer segregated accounts held at the firm. As a result, the SEC and CFTC determined that a Securities Investor Protection Corporation ("SIPC")-led bankruptcy proceeding would be the safest and most prudent course of action to safeguard customer accounts and assets, and SIPC initiated the liquidation of MF Global's FCM business under the SIPA.

Holdings and its debtor subsidiaries/affiliates filed for reorganization on October 31, 2011. Contemporaneously, MFGI entered SIPA liquidation on October 31.

MF Global was one of the world's largest FCMs, in addition to being a primary dealer in US Treasuries securities by designation of the Federal Reserve Bank of New York. Tens of thousands of commodities customers held segregated accounts containing billions of dollars of commodities positions, cash and cash-equivalents.

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[2] Debtor Holdings had its Futures Commission Merchant business unit solicit futures orders from commodities customers such as Sapere and Holdings subsequently took and accepted the money, securities and property that the commodities customers deposited to margin, secure or guarantee their futures trades and contracts, and used them for other futures trades. Unbeknownst to the commodities customers, their segregated accounts' money, securities and property secured and facilitated Holdings' unlawful high-risk futures activities.

As of October 31, 2011, Sapere had $241 million in its segregated account as a commodities customer. On November 11, 2011, the SIPA Liquidation Trustee transferred to Sapere commodities positions and approximately $70 million in cash in a new account that the SIPA Liquidation Trustee set up with ADM Investor Services. To date, Sapere has received no further transfers, nor has the Trustee responded to several inquiries requesting information regarding when, if at all, a further transfer will be made. As noted earlier, the press has reported that the SIPA Liquidation Trustee disclosed that at least $600 million and up to $1.2 billion or more is missing from the commodities customers' segregated accounts.

ARGUMENT

This case presents a fundamental question, believed to be one of first impression. In fact, this also appears to be the first time that the liquidation of an FCM has created a shortfall of funds in customer segregated accounts, for which there is no plan to cover. The Debtors did not register themselves as FCMs. The Debtor Holdings, however, exercised dominion and control over its FCM business unit (MFGI), doing so for the parent's benefit (facilitating risky bets on futures transactions involving Eurobonds of troubled European countries) and over the segregated-account funds of commodities customers who dealt with the business unit, all to their substantial detriment when by law they should have been kept 100% whole.

This occurred in a scandal, in which the highest corporate officials of Debtor Holdings participated. The resulting scandal has rocked the US commodities markets to their foundations and shaken to its core the confidence, once had by persons ranging from small farmers in America's heartlands to investors and traders across the world, in the reliability of the US commodities markets, US legal protections of segregated accounts and faith in the American legal system.

The Debtor MF Global apparently takes the positions that it has no obligation under the Commodity Exchange Act, the Dodd Frank Act, and the CFTC regulations, that the claims of commodities customers of the Debtors in-form-only (insofar as relevant here) MFGI subsidiary are outside the administration of this Chapter 11 case and that 17 C.F.R. Part 190 does not apply to administration of the Debtors' estates.[3] However, nothing could be further from the truth.

I.

SEGREGATED ACCOUNT CLAIMS HAVE PRIORITY OVER OTHER CLAIMANTS

The law charges the Debtor with FCM responsibility in respect of the missing segregated-account funds of MF Global's commodities customers. The segregated-account customers of MFGI have super-priority rights as creditors pursuant to 17 C.F.R. § 190.08(a)(1)(ii)(J) and 11 U.S.C. § 766.

Under 17 C.F.R §190.08, "customer property" includes, *inter alia*, "cash, securities or other property . . . received, acquired or held to margin, guarantee, secure, purchase or sell a commodity contract," any "open commodity contracts," and even cash, securities or property that "[w]as unlawfully converted but is part of the debtor's estate."

Here, it cannot be gainsaid that we deal with a situation in which a parent corporation, the Debtor, utilized its control of a subsidiary now-in-liquidation, MFGI a registered FCM that conducted FCM business, to strip from the subsidiary's commodities customers' segregated accounts massive sums. MFGI's Liquidation Trustee has estimated the diverted commodities' customers' segregated-account funds as being at least $600 million and up to $1.2 billion or more.

[3] It will not surprise us if others, such as banks intimately involved in MF Global's business and/or in transactions involving the segregated account funds similarly take the position that the commodities customers should not have senior claims in the Debtors' estates. Self-interest and avarice are powerful forces, even in the face of injustice and inequity.

For at least three independent reasons, the bankruptcy protections accorded to commodities customers' segregated accounts apply to the administration of these Debtors' estates.

One: Federal law establishes the regulatory regime for FCMs and for Chapter 11 and other bankruptcy-related proceedings. The United States Supreme Court has held it to be a fundamental principle of federal law that for federal liability purposes, including subjecting a parent corporation to federal regulations applicable to a subsidiary, "that the corporate veil may be pierced and the shareholder held liable for the corporation's conduct when, *inter alia*, the corporate form would otherwise be misused to accomplish certain wrongful purposes, most notably fraud, on the shareholder's [parent corporation's] behalf." *United States v. Bestfoods*, 524 U.S. 51, 62, 118 S.Ct. 1876, 1885 (1998).

Two: Section 2(a)(1)(b) of the Commodity Exchange Act, 7 U.S.C. § 2(a)(1)(b), subjects the Debtor Holdings to the CFTC regulations. It states that: "The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person." Therefore, Holdings is, for the purposes of the Act and the CFTC's regulations thereunder, the "person" charged with compliance with all of the Act's requirements. Those requirements include 17 C.F.R. § 190.

Three: No later than the moment when the parent-Debtor began accessing the funds in the commodities customers' segregated accounts of MF Global, the parent-Debtor itself became a *de facto* FCM. In short, Debtor Holdings was by then running the FCM business and doing so

for its benefit. Even prior to Dodd Frank, the CFTC has broadly construed the definition of FCM-related activities.

Indeed, the corporate parent (Debtor Holdings) was "accept[ing]" money that FCM customers had deposited "to margin, secured, or guarantee any trades or contracts," which the parent-Holdings used in futures activities. *See* Commodity Exchange Act § 1a(28)(A)(i)(II), 7 U.S.C. § 1a(28)(A)(i)(II)[4]. Whether the directors, officers, employees and/or agents of the MFGI subsidiary were actively complicit in this activity of the Debtor Holdings or passively stepped aside and allowed the domineering parent-Debtor to access the segregated-account funds and use them in its futures activities, the Debtor became a *de facto* FCM the moment it accessed segregated-account funds.

Accordingly, the Debtor's Chapter 11 case must be administered consistent 17 C.F.R. § 190.08(a)(1)(ii)(J) and in consonance with 11 U.S.C. § 766(h), with the commodities customers having segregated accounts being treated as a customer class of the Debtors. That means that so-called "MFGI"'s segregated-account customers shall be entitled to receive payment out of the Debtors' estate of 100% of those customers' segregated-account funds on a first priority basis, ahead of all creditors, secured and unsecured.

We realize that it is possible that the Debtor, MFGI and/or others may object to this motion by arguing, in words or substance, that the facts pertaining to the missing segregated-account funds and how they came to be missing are not yet fully known and that the relief requested should not be granted, for example, on the ground sufficient evidence has not been adduced as to the facts of when, where and how the Debtor accessed and disposed of the missing commodities customers' segregated account funds. We respectfully submit that any such

[4] The Dodd-Frank Act recently amended and renumbered the definition of an FCM in the CEA from Section 1a(20) to Section 1a(28).

argument would be insufficient to deny this motion and that giving credence to such an objection would be unjust. This is because, among other things, the public revelation that on or about October 31, 2011, the Debtor and/or its non-debtor subsidiaries and affiliates notified the SEC and CFTC of a shortfall in segregated-account funds and the statements of the SIPA Liquidation Trustee that $600 million up to $1.2 billion or more of customer-funds is missing are themselves sufficient to provide the legal framework for administration of claims against the Debtor's estate. (In classic, common law terms, this is at least a *res ipsa loquitur* situation.)

If there is a shortage of further details, it unfortunately exists only because the Debtor, its representatives, MFGI and the SIPA Liquidation Trustee have not openly communicated the factual developments so that they are of-record in this Court. Moreover, the Trustee has not responded to several written and email requests made by Sapere's attorneys discuss shortfall in customers' segregated accounts. Any dearth of of-record factual detail is solely attributable to Debtors' efforts to obviate the existence of a clear and accurate factual record in this matter.

That circumstance is not the fault of the movants or the commodities customers who had segregated accounts at MFGI. Nor should the withholding by the Debtors of information result in administration of the Debtors' estate such that its Liquidity Facility Lenders or other creditors of the Debtor or others obtain priority rights over the commodities customers with segregated accounts through Cash Collateral, Cash Management or other orders; nor should the processes for administration of the Debtors' estate fail to include in the Chapter 11 case itself the requisite protections of the rights of the commodities customers whose are not receiving 100% of their segregated accounts, which are missing or otherwise undistributed to them, because of the need of trustees and others to investigate what the Debtor did and caused to be done with those funds.

II.

ALTERNATIVELY, RULE 2004 EXAMINATIONS SHOULD BE ORDERED AND THE DEBTORS' ESTATES ADMINISTERED CONSONANT WITH 17 C.F.R. § 190 PENDING DEVELOPMENT OF FURTHER EVIDENCE OF THE RELEVANT FACTS

Nevertheless, in anticipation of the possibility of objections asserting in words of substance the insufficiency of evidence presently to support the relief being requested, Movants, as an alternative, also request that the Court order that movants may conduct Fed. Bankr. R. 2004 examinations of any party in interest relating to the relevant facts.

The Rule 2004 examinations would cover: the existence, amount and/or disposition of commodities customers' segregated account funds at MFGI (including without limitation access, dominion and/or control over the same by or for the benefit of any of the Debtors and/or any other non-debtor subsidiary or affiliate of the Debtors); and/or the circumstances under which any such funds became missing and/or have not been 100% transferred post-petition to commodities customers owning those segregated accounts; and/or the existence, description, nature, custody, condition and location of any documents or other tangible things and the identity and location of persons who know of any matter relevant to the subject matter of this motion.

The 2004 examinations will include matters from the date one year prior to the filing of the Debtor's petition and SIPC's SIPA liquidation action against MFGI. The 2004 examinations will include examinations of the Debtors; MFGI; the Debtors' and their non-debtor subsidiaries' and affiliates' present and former employees and representatives identified as being involved in such circumstances; witnesses potentially knowledgeable about any such circumstances; the banks and correspondents of the Debtors and their non-debtor subsidiaries and affiliates who received funds that may have originated from commodities customers' segregated accounts; the

trustees and their representatives involved in investigating the missing segregated account funds; and other persons. The 2004 examinations will include the production of documentary evidence.

Movants further request that, pending the completion of the 2004 examinations and the opportunity to provide further submissions to the Court and for the Court to hear and determine the issues based on the resulting evidence, the Court order that the Debtors and their non-debtor subsidiaries and affiliates and the trustees and their representatives conduct the Chapter 11 case and/or the SIPA liquidation such that the commodities customers who have not received 100% of their segregated accounts shall be treated no less favorably than they would be treated were the Debtors' estate administered consistent with 11 U.S.C. §§ 761-767 and 17 C.F.R. § 190 being applicable to the Debtors' estate.

CONCLUSION

For the foregoing reasons, the Court should enter an order directing the Debtors-in-Possession, their non-debtor subsidiaries and affiliates and the bankruptcy Trustee to administer the Debtors' estates pursuant to 11 U.S.C. §§ 761-767 and 17 C.F.R. § 190.

Alternatively, the Court should order Rule 2004 examinations as heretofore requested, hold this motion in abeyance pending the completion thereof, and order that the Debtors and their non-debtors subsidiaries and affiliates and the trustees and their representatives in the interim conduct the Chapter 11 case and the SIPA liquidation such that the commodities customers who have not received 100% of their segregated accounts shall be treated no less favorably than they would be treated were the Debtors' estate administered consistent with 11 U.S.C. §§ 761-767 and 17 C.F.R. § 190.

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

Dated: December 15, 2011
New York, New York

Respectfully submitted,

FORD MARRIN ESPOSITO WITMEYER & GLESER, L.L.P.

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UNITED STATES BANKRUPTCY COURT
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	:	
Debtors.	:	Jointly Administered

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Stephen R. Chuk, being duly sworn, deposes and says:

I am not a party to the action. I am over the age of eighteen years old and reside in New York, New York.

On December 15, 2011, and in accordance with the Procedures Order entered by the Court in this case at Docket No. 256, I caused a true and correct copies of the foregoing Notice of Hearing, Motion, and annexed Exhibit to be served via electronic mail upon all persons listed on the Master Service List for this case maintained at www.mfglobalcaseinfo.com, and by the Court's CM/ECF System upon all other interested parties.

Dated: New York, NY
December 15, 2011

/s/ Stephen R. Chuk
Stephen R. Chuk

EXHIBIT A

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

ORDER ON MOTION TO DIRECT THE DEBTORS' ESTATE TO BE ADMINISTERED PURSUANT TO 11 U.S.C. §§ 761-767 AND 17 C.F.R. § 190

Upon the Motion (the "Motion")[1] of Sapere for an order pursuant to 11 U.S.C.§ 105 and 28 U.S.C. § 157(b)(1) & (2)(A), directing the Debtors-in-Possession, their non-debtor subsidiaries and affiliates and the bankruptcy Trustee to administer the Debtors' estates pursuant to 11 U.S.C. §§ 761-767 and 17 C.F.R. § 190 and applying those provisions throughout the future of these cases; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is required by law and in the best interests of the Debtors, their estates, their creditors and other parties in interest; and after due deliberation thereon and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

[1] Capitalized terms used but not defined herein shall have the same meanings ascribed to the in the Motion.

1. The Motion is granted.

2. The Debtors-in-Possession, their non-debtor subsidiaries and affiliates and the bankruptcy Trustee shall administer the Debtors' estates pursuant to 11 U.S.C. §§ 761-767 and 17 C.F.R. § 190.

3. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: December ___, 2011

_____

MARTIN GLENN
United States Bankruptcy Judge