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

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In re	: Chapter 11
	: :
MF GLOBAL HOLDINGS LTD., et al.,	: Case No. 11-15059 (MG)
	: :
	: Jointly Administered
Debtors.	: :
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**SAPERE’S REPLY TO SIPA TRUSTEE’S STATEMENT  
WITH RESPECT TO EXPEDITED 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**

Allowing the time in which to respond to Sapere’s motion to pass, and waiting until after Sapere filed its Reply, the SIPA Trustee filed its statement responding (Docket no. 358) to Sapere’s motion. Sapere replies to that belatedly-filed statement, as follows:

1. ***First***, the SIPA Trustee’s Statement misapprehends Sapere’s motion.
2. Sapere’s motion seeks the Court’s determination that Holdings’ estate must be administered under 17 C.F.R. § 190 and 11 U.S.C. §§ 761-767 for at least three reasons. One is the US Supreme Court’s decision in *United States v. Bestfoods*, 524 U.S. 51, 62 (1998), concerning a parent entity’s obligation to fulfill its subsidiary’s regulatory obligations, in particular here, the obligations owed to commodities’ customers in respect of segregated

accounts. Another is that MFGH<sup>1</sup> is, for the purposes of the Commodity Exchange Act and the CFTC's regulations thereunder, the "person" charged with compliance with the Act's requirements, per Commodity Exchange Act § 2(a)(1)(b), 7 U.S.C. § 2(a)(1)(b). A third is that Holdings was a *de facto* commodities broker.

3. The facts pertinent to this matter cannot be genuinely disputed. MFGH's Chapter 11 Petition, Ex. A judicially admitted as much, viz. "MF Global, a Delaware corporation, is one of the world's leading brokers in markets for commodities and listed derivatives." (Docket no. 1, Ex. A, p. 2, ¶ 3)<sup>2</sup> MFGH's SEC filings during the two years of Jon Corzine's tenure as CEO also render indisputable that MFGH was in-fact a centrally managed, single point of access, leading brokerage firm comprising in-fact a single intermediary with respect to customers. (Docket no. 355, Exs. A & B) While those facts are in themselves sufficient to grant the relief for which Sapere moved, Sapere also pointed out that *res ipsa loquitur* applies and that as congressional testimony and the media have made public, MFGH caused commodities customers' segregated accounts to be used to meet MFGH's margin, capital and financial needs.

4. The alternative request for a directive to assure that the case is administered so that such relief can be finally granted pending discovery flows only from the possibility that the Court might determine that more evidence is required prior to ruling on the substantive question.

5. The SIPA Trustee simply misstates Sapere's motion and incorrectly asserts that "Sapere bases its Motion on the suggestion that MF Global Holdings Ltd., et al. ("MFGH" or the "Debtor") may have misappropriated customer property from MFGI, and that this was the cause of the customer property shortfall that has been identified by the SIPA Trustee and others."

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<sup>1</sup> Because the SIPA Trustee uses "MFGH" to refer to MF Global Holdings, Ltd. and "MFGI" to refer to MF Global, Inc., we will use that convention in this statement. We note that Sapere more typically refers to MFGH as "Holdings."

<sup>2</sup> In paragraph 1 of Exhibit A, MFGH states that any reference to "MF Global" refers to MF Global Holdings, Ltd.

6. **Second**, the SIPA Trustee a-bit-misleadingly leads with the statement that “like other MFGI customers, Sapere has been the beneficiary of expedited distribution of MFGI customer property, a process that the SIPA Trustee is pressing forward as a high priority before this Court.” One must wonder why the SIPA Trustee did this. Sapere agrees that—only after Sapere and its counsel’s inquiries to the SIPA Trustee why Sapere had not received payment in respect of \$125 million of its T-Bills went unanswered, after Sapere was forced to file an objection to the proposed third distribution before Sapere even got a response from the SIPA Trustee, after which the SIPA Trustee incorrectly told Sapere that it was receiving payment in respect of the T-Bills in the second distribution (which in fact did not occur), and after Sapere appeared by counsel at the December, 9, 2011 hearing to object—did the SIPA Trustee then make a partial distribution to Sapere in respect of the T-Bills. That has left Sapere with \$90 million in segregated-account funds missing. On January 12, 2012, the SIPA Trustee stated in an open meeting that no further distributions to commodities customers are planned. Although vague allusions were made to an ongoing investigation, the SIPA Trustee refused to entertain oral questions and did not answer any of Sapere’s written questions.<sup>3</sup>

7. **Third**, the SIPA Trustee either inadvertently makes, or altogether misses, a salient point. He states that: “The SIPA Trustee notes that, if Sapere’s suspicions are correct and improper transactions involving customer property did occur as between MFGH and MFGI, the SIPA Trustee may have a variety of causes of action under the Bankruptcy Code.” A decision by

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<sup>3</sup> The SIPA Trustee’s footnote 3 asserts that he (or his staff) has communicated with Sapere ten times, including after the January 12, 2012 meeting. The number ten seems to us to be a rough estimate. However, as the SIPA Trustee raised this, let us complete the record. The first five or so communications related to the T-bills, with one of them being in a packed courthouse elevator. Two others concerned a question to which the SIPA Trustee (via staff) responded that he lacks information because he has limited communication with MFGH and its affiliates and knows only what he reads in the press. Three others – including the conversation after the January 12, 2012 meeting, inquired when Sapere would receive the “Reconciliation Documents” that the SIPA Trustee announced were being sent to all customers commencing December 16, 2011; the SIPA Trustee finally said a short while ago (on January 18) that the reconciliation documents would be mailed to Sapere later today.

the Court that 17 C.F.R. § 190 applies to MFGH's estate can, among other things, obviate the need for titan law firms representing MFGH and MFGI, respectively, to engage in battles with one another funded by "other people's money," i.e., at substantial cost to the estates of MFGH and MFGI.

8. ***Fourth***, MFGH's Petition states that it has \$41+ Billion in assets. (Docket no. 1, Ex. A) Yet, the SIPA Trustee states: "It must also be recognized that MFGH appears to have limited, if any, assets available to compensate for potentially hundreds of millions of dollars of shortfalls in customer property." If the Petition is true, then the MFGH assets should be able meaningfully to contribute to the "shortfalls in customer property."

9. ***Fifth***, the putative investigations are opaque, to be charitable about it. Yet, "the SIPA Trustee reiterates that he is already conducting a thorough and independent investigation under a statute which provides tools and authority for that purpose."

10. ***Sixth***, the fundamental dispute is not about the magnitude of MFGH's assets, but how to allocate them among claimants. This pits approximately 38,000 commodities customers—from farmers in the American heartland to investors across the country—against large banks and financial institutions. However, no one speaks for the commodities customers. Each must speak for him-, her- or itself.<sup>4</sup> In that clash, the Statutory Creditors' Committee (dominated by large financial institutions) denigrates the rights of commodities customers as creditors even though based on the Bankruptcy Trustee's latest creditors' list Sapere would be the third largest creditor (on an "out of pocket" claim alone, ignoring other tort damages). Aligning with financial institutions, the Bankruptcy Trustee pejoratively dismisses the victimized commodities customers as not being "true creditors" and as engaging in a "charade." An opaque

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<sup>4</sup> One can easily understand why smaller commodities customers, although injured perhaps grievously, cannot even afford to leap the first hurdle of the SIPA Trustee's complicated claims documentation.

investigation in another proceeding is not an adequate, just or equitable substitute for the vigorous assertion by commodities customers of their rights in this proceeding and judicial protection of those rights.

**CONCLUSION**

For the foregoing reasons, the Court should grant the relief requested by Sapere.

Dated: January 18, 2012  
New York, New York

Respectfully submitted,

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