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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

COMMODITY CUSTOMER COALITION'S OBJECTION TO THE MOTION OF THE DEBTORS FOR INTERIM AND FINAL ORDERS UNDER 11 U.S.C. §§ 105, 361, 362, 363(c), AND 363(e) AND BANKRUPTCY RULES 2002, 4001, 6003, 6004 AND 9014 (I) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION TO THE LIQUIDITY FACILITY LENDERS, AND (III) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND (c)

The Commodity Customer Coalition, which is made up of numerous MF Global, Inc. customers such as Phil Edgerley, a hog farmer from central Illinois, as well as those other customers listed on Exhibit A (and, on an informal basis, represents the interests of over 2,500 MF Global, Inc. customers who have indicated interest via email or through their brokers) (together, the "Customers"), objects to the Motion of the Debtors for Interim and Final Orders ("Motion") on the following grounds:[1] (i) the Debtors have not provided adequate notice of the

[1] Capitalized terms that are otherwise not defined in this Objection shall have the same meaning ascribed to them in Debtors' Motion.

Motion to all interested parties; (ii) no one — not the Liquidity Facility Lenders or the professionals — is entitled to priority secured interests in assets that may belong to Customers; (iii) the Debtors have not proposed any protection for the priority interests of Customers; and (iv) the Liquidity Facility Lenders are not entitled to a finding of good faith at this stage in the proceedings.

INTRODUCTION

MF Global, Inc. was a registered broker-dealer, used by its Customers to trade commodities, futures and derivatives. Customers maintained accounts at MF Global, Inc., which were supposed to be held inviolate under CFTC Regulation 4.20(c), and which have a first-priority right of recovery under 11 U.S.C. § 766(h) and 17 C.F.R. § 190.08. Yet, it appears that over $600 million in Customer funds are unaccounted for at MF Global, Inc. ("Missing Funds"), due to poor internal controls, and may have been commingled with proprietary funds held by MF Global, Inc., and the Debtors.

Presently, the Securities and Exchange Commission ("SEC"), Commodity Futures Trading Commission ("CFTC"), the FBI, and the Trustee overseeing the liquidation of MF Global, Inc., are investigating the disposition of the Missing Funds. It could be that some or all of the missing funds are held by, or are tied up in assets owned by, the Debtors. According to Section 766(h) of Chapter 11 of the Bankruptcy Code, such funds would have to be returned to the Customers before any other creditor.

In the meantime, Debtors, the Liquidity Facility Lenders, and the professionals representing both, have sought approval to carve out funds for themselves — under a so-called super-priority protection — without regard to the Customers' right to have their funds returned before any other money is spent from the bankruptcy estate. Yet, the Debtors have not provided notice to all MF Global, Inc. customers, nor have they apparently even notified the trustee for MF Global, Inc. of the potential impact of the Motion on potential Customer funds.

Indeed, if granted, such a super-priority right would abrogate sacrosanct protections for commodities account holders, depriving those who trade in commodities, futures, and derivatives, of their only protection and potentially chill economic activity. It is premature to enter such an order — particularly one that includes a "good faith" finding to a lender that may have benefitted from the improper transfer of the Customer Funds to pay down an outstanding loan.

BACKGROUND

MF Global customers represent a cross-section of people across America and the world, from farmers and ranchers who hedge their crops and herds, to oil producers and miners who use futures to lock-in prices and take delivery of physical commodities, to retirees who invest in futures to diversify their portfolios. For example, farmers who have crops in the field need to sell futures in commodity markets so they can lock in prices for their future yields today, instead of taking on market risk as they would otherwise be exposed to volatile price swings. Large corporations like Coca-Cola who make money in foreign markets do not want to lose

money when they repatriate revenue earned in foreign currency. They have to be able to forecast future expenses and profits accurately in the currency of their domicile and hedge that currency price risk in futures markets accordingly.

Investors add volume and liquidity to these markets which allow for better, more efficient pricing of commodities. This allows for stability in prices of commodities and predictability of future profit and loss, which in turn allows for stability in producer and consumer prices. These commodities include everything from grains like corn and wheat, to energy like oil and natural gas, to soft goods like cotton and sugar, to currencies like the US dollar and Euro, to financial instruments like bonds and stock indexes. Simply put, trading in commodity futures markets is a mainstay of the American economic engine.

Segregated Funds: Cornerstone of the Commodities Industry:

One of the big differences between commodities brokers and securities (stocks and bonds) brokers is that commodity brokers have an obligation to keep customer funds completely segregated from the firm's own assets. This is to ensure that clients are completely protected from losses sustained by the firms' trading and operations. It also is in contrast to the securities industry, as the Securities Investors Protection Act back-stops losses suffered by securities investors due to broker malfeasance, but does not similarly back-stop similar losses suffered by commodities investors.

Many industry groups and regulators have heralded segregated account protection, arguing that no client has ever lost a penny from a segregated account as the result of a broker bankruptcy, and this has been a key driver of volume and profitability for the Chicago

Mercantile Exchange. "However, all futures trading accounts, including managed futures, have the advantage of specific industry rules that require the segregation of customer funds from the firm's own funds. The practice of segregating customer funds protects investors in the event of default at the Futures Clearing Merchant (FCM, the industry term for futures brokerage firms licensed to trade on futures exchanges in the U.S.) holding their account. While FCM bankruptcies are rare, they do occur. In 2005, Refco Inc. and 23 of its unregulated subsidiaries filed for Chapter 11 bankruptcy protection. However, Refco's regulated subsidiaries (where customers' futures trading and managed futures accounts resided) were unaffected and customers were able to continue trading and managing their accounts." *See* "Safeguarding Customers Through Segregated Funds" by CME Group, Inc. http://www.cmegroup.com/managed-futures/Feb2011/safeguarding-customers-through-segregated-funds.html.

So, whereas securities clients are afforded various insurance in the event of a broker bankruptcy, commodities clients are afforded none—which is economically rational only because their funds cannot be commingled with a broker's assets and cannot be used to pay creditors in a bankruptcy. Segregated funds are accounted for daily to the National Futures Association ("NFA") and to the CFTC through the broker's designated self-regulatory organization ("DSRO"), which in MF Global's case was the Chicago Mercantile Exchange ("CME").

MF Global Did Not Maintain Segregated Accounts

Despite the fact that MF Global was responsible for maintaining full segregation of customer funds on a daily basis, there remains $633M in unaccounted for customer segregated

funds two weeks after the firm filed bankruptcy. Moreover, the officers and directors of MF Global have thus far been uncooperative in aiding the court in ascertaining the whereabouts of these missing funds, despite a formal probe by the CFTC, the US futures regulator. This has driven the Trustee's office to comment: "Our forensic investigators have been there since last week and nothing we have found so far causes us to think anything other than there is an apparent shortfall at MF." *See* "MF Global Fund Frustration Grows, CFTC Confirms Probe," by Reuters, November 10, 2011, http://www.reuters.com/article/2011/11/11/us-mfglobal-cftc-investigation-idUSTRE7A96C420111111

These failures to cooperate are consistent with the operating history of MF Global, which is fraught with examples of misconduct and disregard for regulations. "An analysis of regulatory enforcement actions shows MF Global has drawn more sanctions from the U.S. commodity futures regulator than each of its 14 closest peers in that market over the past decade. MF Global has also drawn the second highest amount in fines, for alleged lapses in risk supervision and recordkeeping." *See* "Insight: Risk, Lax Oversight Riddle MF Global's Past," by Reuters, November 11, 2011, http://www.reuters.com/article/2011/11/11/us-mfglobal-legal-f-idUSTRE7AA2KO20111111

As of today, it is not clear where the Missing Funds might be—although they may have been taken as part of one or more margin calls related to sovereign debt held by MF Global on its own account. *See* "MF Global May Have Used Customer Funds In The Losing $6.3 Billion Trade Without Informing Clients," November 8, 2011, Forbes, at http://www.forbes.com/sites/robertlenzner/2011/11/08/mf-global-used-customer-funds-in-the-

losing-6-3-billion-trade-without-informing-clients/. The CME has gone so far as to say that it appears MF Global moved funds immediately prior to bankruptcy from "segregated funds in a manner that may have been designed to avoid detection," according to a CME statement on November 2, 2011. http://www.prnewswire.com/news-releases/cme-group-statement-regarding-mf-global-133102203.html. It is equally possible that these funds were seized and used to pay down the line of credit held by MF Global Holdings, Ltd. or have otherwise been used to bolster cash held by the Debtors.

ARGUMENT

Due to the apparent shortfall of customer segregated funds and the lack of cooperation by MF Global officers and directors in determining its whereabouts, it is imperative that the Court does not grant any liens, encumbrances, priorities, or super-priorities of any assets in the Debtors without protection for customer funds at this time.[2] To do so could allow Debtors and JPMorgan Chase Bank, N.A. ("JPMorgan") to obtain a priority over Customers on Customer Funds, in derogation of the Bankruptcy Code and CFTC regulations. This would deprive commodity investors of the one protection they have — a right to priority payout — and possibly further chill economic activity in these troubled economic times. Accordingly, absent some protection for Customers, Debtors' Motion must be denied.

[2] Objectors realize that MF Global Holdings, Ltd. and the other Debtors wish to reorganize and that many thousands of jobs are at stake. Given the $1.2 billion in equity claimed by the Debtors in their Voluntary Petition, there should be a way to provide adequate protection without impacting the rights of segregated customer account holders. Also, if in fact $1.2 billion in equity exists, one would think that existing equity holders would provide protection to the proposed lender to protect their interests.

I. Customers Have Absolute Priority Over Funds Implicated By The Motion.

According to 11 U.S.C. § 766(h), a bankruptcy trustee "shall distribute customer property ratably to customers on the basis and to the extent of such customers' allowed net equity claims, and ***in priority to all other claims***, except [limited costs] attributable to the administration of customer property." (emphasis added.) Under 17 C.F.R. 190.8, "customer property" includes (among other things) 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." The Motion implicates customer property in at least two ways.

First, it is unquestionable that there are well over $600 million in Customer funds that simply have not been accounted for. If speculation is true, the Missing Funds could have been seized in a margin call or otherwise improperly applied by the Debtors to their outstanding obligations. Commingling between MF Global, Inc. and Debtors could necessitate a finding of substantive consolidation. Such a finding would, in turn, merit treating Debtors like futures clearing merchants. Such a finding would obviate the protection of Chapter 11, necessitate Debtors' immediate liquidation, and would unquestionably require priority return of assets to Customers. Until such time as the SEC, CFTC, FBI, and the trustee overseeing the MF Global, Inc. liquidation have completed their forensic analysis, the Court ought to treat the funds that the Debtors seek to use as if they include the Missing Funds.

Second, the Motion and Amended Interim Order each provide that JPMorgan can obtain a super-priority or first priority lien (JP Morgan currently is an unsecured creditor) on all

property in which Debtors have an interest, including "intercompany indebtedness … owed by MF Global, Inc. to each Debtor." In other words, it is possible, under the Motion, for JPMorgan to obtain a seemingly preferred interest in payments that MF Global, Inc. owes to Debtors—and could use that priority to force MF Global, Inc. to pay JPMorgan rather than pay Customers. The Proposed Order, in Paragraph 5, also gives JPMorgan priority over ***any*** claims.

Put simply, given the unknowns at this stage in the proceeding, it is undeniable that the Motion may impact funds and/or assets that should first be paid out to Customers—not to lenders and professionals.

II. Customers Should Have Received Notice.

In this matter, notice has been given in haphazard fashion. Debtors sought and received interim rights over cash collateral and JPMorgan received its super-priority rights on an interim basis without any real notice being given. Then, a hearing was noticed for November 14, 2011. An amended notice, found at Dkt. No. 63, re-set the hearing for ***Thursday***, November 16, 2011, at 3:30 p.m. It also set the objection date for November 11, 2011. Of course, the 16th is a Wednesday and November 11, 2011, was a federal holiday.

Even assuming Debtors have calendar-challenges rather than devious intent, Customers still should have received notice of the Motion. As first-priority claimants for whom over $600 million in collateral has ***vanished,*** it seems unquestionable that Customers of MF Global, Inc. potentially have rights that ought to be protected in the closely related bankruptcy of MF Global Holdings, Ltd. Yet, no effort was made even to post notice of the Motion on the SIPC trustee's website in the related bankruptcy.

http://dm.epiq11.com/MFG/Project/default.aspx. For this reason alone, the Motion ought to be denied at this time, until adequate (and accurate) notice can be provided to Customers.

III. The Court Ought To Protect Customer Funds.

As noted above, a finding of commingling between MF Global, Inc. and Debtors could necessitate a finding that MF Global, Inc. and the Debtors were substantively consolidated. Such a finding would, in turn, merit treating Debtors like futures clearing merchants. And, such a finding would require that the Court give first priority not to JPMorgan or the professionals in this matter, but to Customers.

It is not beyond the pale to expect that the massive investigation being undertaken by the SEC, CFTC, FBI, and SIPC trustee, will unearth facts that support such a finding. Accordingly, assuming the Court finds that Debtors provided adequate notice, the Court should protect the Customers' funds. One such protection would be to release $633 million immediately from the estate of MF Global Holdings, Ltd., which reports excess equity of more than $1.3 Billion. (*See* Mot. at 5.) This would leave Debtors and their lenders with sufficient additional equity to wind-down Debtors' business.

Absent such relief, Customers have no other recourse. Indeed, the SIPC cannot provide relief to the Customers, as its protections only inure to those trading in securities. The CME's offer of $250,000,000 in liquidity does not staunch the bleeding, either. It is an insufficient band-aid, at best. As a result, hundreds, if not thousands, of commodity traders are being forced to liquidate trading positions, are losing opportunities to trade and to hedge market risk, and are losing trading positions because the cash they need in order to make margin calls is

tied up with MF Global. These parties' inability to trade, combined with the commodity market's loss of confidence resulting from this collapse, will certainly have a chilling effect on the economy.

Accordingly, the Customers ask that the Court protect Customer funds by immediately releasing $633 million to them or, in the alternative, clearly providing — in any final order relating to the Motion—that: (i) Customers shall have a right to an *ad hoc* committee to monitor events in these bankruptcy proceedings; and (ii) any priority lien given to any party in this bankruptcy shall not be superior to the rights, if any, of the Customers to recover from this bankruptcy estate; and (iii) professionals have no right to recover for fees and expenses until such time as any funds deemed — by the SEC, CFTC, FBI, the SIPC trustee, or this Court — to be Customer funds have been released to the Customers.

IV. It Is Too Soon To Make A Good Faith Finding.

In the Interim Order, it specifically provides that JPMorgan is deemed to have acted in "good faith" and, accordingly, is entitled to the protection of Bankruptcy Code Sections 363(m) and 264(e). Simply put, until the SEC, CFTC and SIPC trustee have completed their investigations, it is simply too soon to determine whether JPMorgan bargained in good faith, at arms-length, for the right to super-priority liens in this matter. Accordingly, Customers respectfully request that the Court note, in any final order relating to the Motion, that it is withholding judgment as to whether JPMorgan has acted in good faith in these proceedings.

V. Conclusion.

Were this Court to allow any party to have an interest superior to customer segregated funds, it would provide a loophole in the protections which are the bedrock of commodity trading. This Court should only provide for the use of Cash Collateral which protects customer funds as Congress, the CFTC, CME, and hundreds of thousands of commodity traders have, for over 100 years, believed to have been the case. The system of regulation in the commodities industry is based on this bedrock principle, and this proceeding should in no way affect it. Wherefore, Phil Edgerley, et al request this honorable Court to deny the request in its current form to utilize Cash Collateral, and only allow such use in a manner which protects segregated customer account holders.

Dated: November 14, 2011

By: */s/ James L. Koutoulas*

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and Plaintiffs Listed in Exhibit A
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