

Testimony of James W. Giddens
Trustee for the Securities Investor Protection Act Liquidation of MF Global Inc.
U.S. Senate Committee on Agriculture, Nutrition and Forestry
December 13, 2011

Chairwoman Stabenow, Ranking Member Roberts, and Members of the Committee: Thank you for inviting me to testify today about efforts to identify, preserve and return assets to former customers of MF Global Inc. My name is James Giddens. I am the court-appointed Trustee for the Securities Investor Protection Act (SIPA) liquidation of the failed broker-dealer, MF Global Inc. I would like to provide an update on the actions I am taking to protect MF Global Inc. customers.

Introduction

On October 31, 2011, I was appointed as the independent Trustee for the liquidation of MF Global Inc. by the United States District Court for the Southern District of New York, on recommendation from the Securities Investor Protection Corporation, or SIPC. As empowered by the Securities Investor Protection Act of 1970, when a brokerage firm must be liquidated due to bankruptcy or other financial difficulties, SIPC uses a court-appointed Trustee to, within certain limits, return customers' property as quickly as possible.

A different Trustee has been appointed to oversee the bankruptcy proceedings of MF Global Holdings Ltd. As the Trustee liquidating MF Global Inc., I do not have obligations to the MF Global holding company, nor do I have firsthand knowledge about the events that transpired prior to MF Global's bankruptcy.

As Trustee, my statutory mandate as the customers' advocate is to preserve and recover MF Global Inc. customer assets so that they can be returned to the rightful owners and to maximize the estate for all stakeholders. The entire Office of the Trustee, which includes legal experts, consultants and forensic accountants, is singularly focused on looking after the interests of customers and returning assets to them as quickly as possible and in a way that is fair and consistent with the law.

I appreciate the interest of this Committee and other Members of Congress and have been working closely and continuously with SIPC, Commissioner Jill Sommers and the Commodity Futures Trading Commission, Chairperson Mary Schapiro and the Securities and Exchange Commission, along with the staffs of their respective organizations, and the Chicago Mercantile Exchange.

Distributions to nearly all of the approximately 36,000 former MF Global Inc. retail customers, whether farmers, day traders, or institutional investors, have been made within weeks of the bankruptcy filing. Through expedited court filings approved by the Bankruptcy Court, we are now in the process of

implementing a distribution that will bring the total distribution to customers to more than \$4 billion. The customer claims process, which we asked the Bankruptcy Court to authorize us to establish on an expedited basis, is also up and running, with claims forms on our website and also sent by mail.

My goal remains to pay MF Global Inc.'s former retail commodities and securities customers 100% of the amounts in their accounts as promptly as permitted by governing regulations. Ultimate distributions are, of course, dependent upon assets available and there is no assurance of a 100% return.

Exhaustive efforts to collect funds from US depositories continue. However, complicating matters, assets located in foreign depositories for customers that traded in foreign futures are now under the control of foreign bankruptcy trustees or administrators. While I will pursue them vigorously, experience dictates that recovery of these foreign assets may be more uncertain and may take more time.

The Office of the Trustee has made every effort to communicate directly and frequently with customers. Our website includes updates, court filings, claims forms and claims filing instructions, including a section addressing the common questions being asked by customers in calls or other communications to my staff. My staff and I are answering customer calls and emails and holding meetings with customer groups and counsel. In the month of November, the call center handled more than 8,500 calls, and more than 60,000 individuals accessed our website on more than 222,000 occasions.

If your constituents have any questions, I encourage them to visit MFGlobalTrustee.com, e-mail my staff at MFGITrustee@hugheshubbard.com, or call our call center at 1-888-236-0808.

I fully understand the frustration of many former MF Global Inc. customers, some of whom you have heard from directly. When a broker-dealer fails under the unprecedented circumstances surrounding MF Global's demise, the liquidation is necessarily complex. My office has been working tirelessly with speed and diligence to identify ways to return assets to customers to the full extent of our ability under the applicable provisions of SIPA, the Bankruptcy Code and CFTC regulations.

Customer Distributions

Commodities Accounts

Returning assets to the approximately 36,000 former MF Global Inc. retail commodities customers, who held millions of US futures positions, has been accomplished thus far through three Bankruptcy Court-approved bulk transfers. Once the Court-approved bulk transfers are completed, more than \$4 billion will have been distributed back to these former commodities customers with US futures positions.

Approximately \$2 billion was distributed to former MF Global Inc. retail commodities customers through the first two bulk transfers, which have been substantially completed. The first transfer was approved by

the Court just two days after my appointment as Trustee and implementation began immediately. The first bulk transfer involved those accounts with open commodities positions – a total of more than 3 million positions with a notional value in excess of \$100 billion. This transfer was implemented immediately to avoid automatic liquidation of the open positions per CFTC regulations, which would have disadvantaged customers and created instability in the futures market. The second bulk transfer totaled approximately \$500 million in customer assets and involved accounts with cash-only positions.

A third bulk transfer was approved by the Bankruptcy Court last week, and it will allow the distribution of an additional \$2.2 billion, which should result in former MF Global Inc. retail commodities customers with US futures positions receiving approximately 72% of their property. The implementation of this third bulk transfer is now underway, with completion of the process expected in two to four weeks.

The sequence and details of these transfers were driven by the priorities of returning customer assets in an expeditious and equitable manner while taking into account the complexities of the evolving situation and the unknowns regarding the locations of customer property and the amount available for distribution. With customer records and transaction bookkeeping in disarray, we worked to the full extent of the law to return assets and bring more assets under our control while also seeking to avoid market disruption.

I appreciate the exhaustive efforts of the CME and other derivative clearing organizations, which have made the bulk transfers possible. I also appreciate the CME's offer of a \$550 million guarantee, which will be available for the benefit of commodity customers should it ultimately be determined that any customer has received more than a pro rata share of the final distribution.

Securities Accounts

Last week, the Bankruptcy Court approved an expedited motion seeking authorization to sell and transfer substantially all retail securities accounts to Perrin, Holden & Davenport Capital Corp. This transfer of approximately 330 accounts will allow former MF Global Inc. retail securities customers to receive all or a majority of the net equity in their accounts. Securities customers should receive 60% or more of their account value, and 85% of the securities customers may receive the full 100% because of a SIPC guarantee.

I appreciate the ongoing support and partnership of SIPC. The staff of SIPC has been an invaluable resource for my office as we work to protect customers and return assets as quickly as possible. SIPC will play a vital role in the return of securities customer assets.

Claims Process

The Bankruptcy Court approved the customer claims process on an expedited basis on November 22, 2011. Consistent with SIPA principles and in the interest of an orderly and efficient claims process, separate, parallel customer claims processes have been established for MF Global Inc.'s commodity futures customers, securities customers, and general creditors, respectively.

Former MF Global Inc. commodity futures customers will file their claims against the commodity account estate. They will receive an equal, prorated distribution from two subsets in that estate: one for US positions traded through US clearing houses (so-called Rule 4(d) segregated funds), and another for foreign positions (so-called Rule 30.7 secured funds). The foreign secured funds are now largely under the control of foreign bankruptcy trustees or administrators, and I will use all means available to gain control of those assets held by foreign entities for the return to US customers. At this time, I do not have control of most of these assets and it is not known when, or if, the assets will become available to my office. If commodity customer claims are not satisfied from the segregated commodity account estate, the remaining claim will automatically go against the general creditors' estate.

Security customers will file their claims against the separate fund of customer property segregated for security customers under SEC rules. Deficiencies will be covered to the limit of SIPC, which is \$500,000 for the valid claims of each securities customer, including up to \$250,000 for claims for cash deposited for the purpose of purchasing securities. Remaining deficiencies in security customer claims, if they exist, will automatically go against the general creditors' estate.

General creditors cannot receive distributions from the customer estates and can only recover claims from the general creditors' estate.

The clear regulatory intent of SIPA is the protection of customer property. Consistent with SIPA, I have the authority to seek recovery of assets removed from customer property funds to the extent a cause of action exists against those who wrongfully removed the funds. In addition, I may also seek Bankruptcy Court approval to allocate existing funds from the general creditors' estate for distribution to customers to the extent of regulatory shortfalls and under certain conditions and circumstances.

Claims have already started to be filed and reviewed. My office is committed to processing them promptly and to supporting a customer-friendly claims process. More than 75,000 claims forms have been mailed to customers, and PDF claims forms have been available on the Trustee's website since November 23, 2011. Detailed instructions and deadlines are also available on the website, and members of my office have been meeting with customer groups and counsel about the process.

Investigation and “Shortfall”

As part of my statutorily-mandated duty, I am investigating the extent of and reasons for any shortfall in customer funds. An investigative team, consisting of counsel experienced in broker-dealer liquidations and expert consultants and forensic accountants from both Deloitte and Ernst & Young, continues in close coordination with the Department of Justice, the CFTC, the SEC, SIPC, and others.

The investigation is ongoing, and I am not yet in a position to make any definitive conclusions. My office does not know at this time, with certainty, the extent of the potential segregation and compliance shortfalls, but I estimate the figure could be \$1.2 billion or more. My office’s investigation into shortfalls involves all customer accounts. The full amount of any shortfall will not be known with certainty until the claims process is completed. These are preliminary numbers that may well change, and I will update these numbers as appropriate. I felt obligated to share preliminary numbers and explain their uncertainty with the public to dampen assumptions that some smaller amount of the shortfall was known with certainty and could not be larger. It is my hope that, for the benefit of customers, the number will come down. No matter the exact amount of the shortfall, however, its probable size is significant and will substantially affect my ability to make a 100% distribution to former MF Global Inc. customers.

The investigation will also address broader topics, including the demise of MF Global Inc. and the events and transactions that preceded it. I have requested and have been granted subpoena power to aid in the investigation. The Bankruptcy Court has written an opinion supporting my view of the importance of maintaining the independence of that investigation and denying participation in it by the representatives of the holding company or former management whose conduct is an important subject of the investigation. At the same time, I am coordinating my investigation with those being conducted for law enforcement purposes by the SEC, the CFTC, and US Attorneys. I expect to make an interim report on the investigation to the Court at an appropriate time, and on completion of the investigation, I expect to make the final report public.

Conclusion

Thank you Chairwoman Stabenow, Ranking Member Roberts and other Members of the Committee for the opportunity to testify before you and to submit this testimony for the full record of the hearing. You can be assured that my entire office and I are fully committed to returning customers' property as quickly as possible in a fair and equitable manner that complies with the law.

APPENDIX – TIMELINE OF TRUSTEE’S MOTIONS ON BEHALF OF CUSTOMERS AND COURT APPROVALS

- **October 31, 2011** – Court appointment of the Trustee for the SIPA Liquidation of MF Global Inc. at approximately 5:00 pm EST.
- **November 2, 2011** – Trustee files emergency motion seeking approval of the bulk transfer of customer commodity open positions and a percentage of the collateral associated with those positions.
- **November 2, 2011** – Court holds a hearing and approves Trustee’s motion for the bulk transfer of open positions and collateral.
- **November 4, 2011** – Court holds a hearing on an expedited basis and confirms Trustee’s authority to issue subpoenas as part of his duty to conduct an investigation. The Court denies a motion to participate in the investigation by representatives of the holding company and subsequently issues an opinion emphasizing the importance of the independence of the Trustee’s investigation.
- **November 7, 2011** – Trustee files motion seeking establishment of procedures to return misdirected wires.
- **November 15, 2011** – Trustee files application seeking approval of an expedited claims process.
- **November 15, 2011** – Trustee files motion seeking approval of the bulk transfer of 60% of the cash attributable to commodities accounts holding only unencumbered cash, or cash equivalents, on October 31, 2011.
- **November 17, 2011** – Court holds a hearing and approves Trustee’s motion for the bulk transfer of cash-only accounts.
- **November 22, 2011** – Court holds a hearing and approves Trustee’s expedited claims process.
- **November 22, 2011** – Court holds a hearing and approves procedures for return of post-bankruptcy misdirected wires.
- **November 29, 2011** – Trustee files motion seeking approval of the bulk transfer of up to an additional \$2.1 billion to restore approximately two-thirds or more of US segregated customer property pro rata to all former MF Global Inc. commodities customers with US positions.
- **November 30, 2011** – Trustee files motion seeking authorization to sell and transfer substantially all retail securities accounts to Perrin, Holden & Davenport Capital Corp.
- **December 9, 2011** – Court holds a hearing and approves Trustee’s motion for a third bulk transfer to former commodities customers with US positions; Court holds a hearing and approves Trustee’s motion to sell and transfer substantially all retail securities accounts.