

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
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Chairwoman Stabenow, Ranking Member Roberts, and Members of the Committee: Thank you for inviting me to testify today. 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 the Committee with an update on efforts to return assets to former customers of MF Global Inc., as well as an update on my investigation into the events that led to the failure of MF Global and considerations stemming from the lessons learned in the liquidation.

My office continues to work tirelessly and expeditiously for the benefit of the former customers of MF Global Inc., and my consistent goal has been the return of as much customer property as possible, as quickly as possible, in a manner that is fair to all customers and that is consistent with the law.

Customer Distributions

When I last testified before this Committee in December, I reported to you that my office had distributed over \$4 billion to former MF Global Inc. retail commodities customers with US futures positions via three bulk transfers.

I am now making an additional interim distribution to former commodities customers with finalized claims, as approved by the Bankruptcy Court:

- 4d property: I am distributing approximately \$600 million of customer property held as segregated by MF Global Inc. for its former commodity futures customers who traded on US exchanges (4d property). This distribution is in addition to the more than \$4 billion in 4d property already distributed and allows customers to receive approximately 80% of their 4d property.
- 30.7 property: I am distributing approximately \$50 million of customer property held as secured by MF Global Inc. for its former commodity futures customers who traded on non-domestic exchanges (30.7 property), primarily in the United Kingdom. This is the first distribution of 30.7 property, and this distribution allows customers to receive approximately 5% of their 30.7 property.
- Domestic delivery class: A distribution will also begin shortly for customer property related to a domestic delivery class, which I have identified as consisting of physical customer property that has been or will be reduced to cash in any manner and which the Court approved as a separate class of commodities customer property.

With the completion of the first interim distribution, I will have returned approximately \$4.7 billion to the former commodities customers of MF Global Inc.

I have also received Court approval to sell and transfer approximately 318 active retail securities accounts, which is substantially all of the non-affiliate securities accounts at MF Global Inc. All retail securities customers have received 60% or more of their account value, and already approximately 80% of former MF Global Inc. securities customers have received nearly the entirety of their account balances because of Securities Investor Protection Corporation (SIPC) advances.

Claims Process

My office has received over 27,000 commodities customer claims asserted in amounts of approximately \$10 billion, over 1,000 securities customer claims asserted in amounts of approximately \$1.4 billion, and over 6,000 general creditor claims asserted in amounts of approximately \$23 billion.

My office has now determined virtually all commodities customer claims and securities customer claims. Determination letters are being issued to claimants on a rolling basis. The deadline for filing general creditor claims more recently passed, and my office is in the process of reviewing and analyzing these claims.

Most retail customer claimants have agreed to the determinations made by my office, and fewer than 2% have so far filed objections, many of which seek clarifications as opposed to challenging the merits of my determination. In that regard, my staff is working with claimants at all stages of the process in an attempt to reconcile and resolve claims matters, and my instruction to the team is only to pursue claims-related litigation when absolutely necessary to preserve the estate for all customers. All such claimants are entitled to due process and ultimately a trial before the Bankruptcy Court if the disputes cannot be resolved without judicial intervention. Until these disputes are resolved, I am limited in the amount of additional funds that I can distribute to customers, because I must appropriately reserve funds for all possible outcomes.

The primary objections to my claims determinations requiring large reserves were filed by administrators or trustees for affiliated MF Global entities, including MF Global UK Ltd. and particularly MF Global Holdings Ltd. and its affiliated debtors, which have filed securities customer claims of over \$607 million and commodities customer claims of over \$147 million, in addition to general creditor claims of over \$1.6 billion.

I have also marshaled over \$1 billion in assets that were not specifically segregated for customers by MF Global Inc. I believe that, at a future date after the claims determinations are finalized, a significant portion of these assets may need to be allocated to commodities and securities customers under principles and in amounts that will be established by an allocation motion subject to Court approval.

Agreements and Litigation

Since the initiation of the liquidation proceeding, I have worked to recover and distribute as much customer property as possible as quickly as possible, and in furtherance of that goal, I have sought to resolve outstanding conflicts with parties through negotiation wherever possible.

I have now reached agreements with two significant parties: the CME Group and MF Global Canada. Both of these agreements will support my ability to distribute additional customer funds:

- CME Group: I have filed a motion seeking Bankruptcy Court approval for an agreement reached between my office and CME Group that includes the return of over \$130 million in property held by CME Group to the MF Global Inc. estate for the benefit of former commodities customers, as well as additional unallocated funds.
- MF Global Canada: The Bankruptcy Court approved in July an agreement between my office and MF Global Canada Co. that provides for the return of approximately \$61 million to the MF Global Inc. estate. In addition, the resolution completely withdraws the MF Global Canada omnibus claim of approximately \$53 million against MF Global Inc. Subject to parallel approval by the Canadian Court, the agreement will reconcile and net the parties' respective claims and avoid the uncertainty, delay, and expense of complex, cross-border litigation with a foreign affiliate.

In the U.K., litigation is progressing to resolve a dispute between my office and the U.K. Joint Special Administrators as to whether the customer property that is the subject of my approximately \$700 million client claim with the Joint Special Administrators was or should have been segregated under English law. A target date of April 2013 has been set by the English Court for the start of the trial. I believe it is crucial that this intellectual dispute over how property was or should have been handled be urgently resolved so that the affected customers can receive back the property that is owed to them, and I will continue to explore a consensual resolution, if possible.

Investigation and Potential Claims

In June, I filed a report on my independent investigation into the failure of MF Global with the Bankruptcy Court.

My investigation concluded that as attempts were made to transform MF Global into a full-service global investment bank, management failed to add to its Treasury Department and technology infrastructure, which was needed to meet the demands on global money management and liquidity. Management's actions, along with the lack of sufficient monitoring and systems, resulted in customer property being used during the liquidity crisis to fund the extraordinary liquidity drains elsewhere in the business, including margin calls on European sovereign debt positions.

In light of these conclusions, I have determined there may be valid claims against certain individuals and entities:

- Directors & Officers: I believe that there are colorable claims, including claims for breach of fiduciary duty and negligence, against former MF Global CEO Jon Corzine, former MF Global CFO Henri Steenkamp, and former MF Global Assistant Treasurer Edith O'Brien, among others. In this connection, I am participating in the prosecution of these claims by cooperating with plaintiffs in the pending lawsuits against these parties. Any funds received through prosecution of the claims will be returned to customers by my office, based on determinations already made through the claims process as described above.
- JPMorgan Chase: I am engaged in active discussions with JPMorgan Chase (JPM) with respect to transfers that I believe may be voidable or otherwise recoverable. JPM has cooperated with my investigation. To date, JPM has returned approximately \$89.2 million in customer property and \$518.4 million in non-segregated unallocated MF Global Inc. assets, subject to certain reservations of JPM's security interest in such funds. This sum includes \$168.1 million in funds representing the proceeds of excess collateral that JPM held at the commencement of MF Global Inc.'s liquidation.

Shortfall

There remains an approximately \$1.6 billion shortfall in segregated property available to return to former customers. I am urgently working to eliminate the shortfall by determining the size of customer claims pools with the passing of the June 2, 2012, deadline for filing claims and by continued efforts at the recovery of funds through negotiation and litigation. In addition, I may request Court approval for the allocation of non-segregated property to the pools of customer property.

Recommendations

My investigation report included recommendations for legislative, regulatory or other reforms that might help avert similar liquidations in the future, or at least alleviate their consequences. These topics may merit further study and input from regulators, industry experts, and members of the public:

- Eliminating the segregated versus secured distinction in CFTC Regulation 30.7, ensuring consistency of customer protection when trading overseas, and monitoring compliance abroad closely.
- Creating a protection fund for futures and commodities customers – to provide parity with securities customers and bank depositors – under a certain threshold, and implementing suitability standards for customers of Futures Commission Merchants (FCMs).
- Providing for civil liability for officers and directors in the event of a commodities segregation shortfall.
- Considering simplifying some CFTC rules for bulk transfers and claims in an FCM liquidation proceeding.

- Enacting legislation explicitly authorizing a trustee's standing on behalf of customers.

I also support the new rules recently approved by the CFTC that will further protect futures customers, including rules that:

- Abolish the alternative calculation method and require FCMs to use the net liquidating equity method representing the total account balance owed to customers when determining the secured funds the FCM must hold to meet customer obligations.
- Require FCMs to maintain written policies and procedures governing the maintenance of excess customer segregated and secured funds.
- Require written pre-approval by senior management for any withdrawal of more than 25% of excess segregated or secured funds that is not for the benefit of customers, and filing of notice with the National Futures Association (NFA) of any such withdrawal.
- Require additional filings with the NFA, including daily segregation and secured amount computations.

Conclusion

My office has made every effort to communicate directly and frequently with customers. Our website includes updates, court filings, and claims information, 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. I have established special hotlines for customers to call with questions about their claims determinations, the treatment of their physical property, or tax issues.

If your constituents have any questions, I encourage them to visit MFGlobalTrustee.com, email 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.

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.