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

IN RE:)	
)	Adversary No. 11-2790 (MG) SIPA
)	
MF GLOBAL, INC.,)	
)	
Debtor.)	

**MEMORANDUM OF THE SECURITIES INVESTOR PROTECTION CORPORATION
IN SUPPORT OF TRUSTEE’S EXPEDITED APPLICATION FOR ENTRY OF AN
ORDER ESTABLISHING PARALLEL CLAIMS PROCESSES FOR COMMODITIES
AND SECURITIES CLAIMS, APPROVING FORM AND MANNER OF
PUBLICATION AND MAILING OF NOTICE OF COMMENCEMENT;
SPECIFYING PROCEDURES AND FORMS FOR FILING, INFORMAL
AND FORMAL DETERMINATION, AND ADJUDICATION OF CLAIMS;
FIXING A MEETING OF CUSTOMERS AND OTHER CREDITORS;
AND FIXING INTERIM REPORTING PURSUANT TO SIPA**

The Securities Investor Protection Corporation (“SIPC”) submits this memorandum in support of the application of James W. Giddens (“Trustee”), trustee for the liquidation of MF Global, Inc. (“Debtor”) under the Securities Investor Protection Act (“SIPA”), 15 U.S.C. §§ 78aaa et seq., for entry of an order: (1) establishing parallel claims processes for commodities and securities customers; (2) approving the form and manner, as proposed by the Trustee, of the publication and mailing of notice of the commencement of the liquidation; (3) specifying

procedures and forms for the filing, determination, and adjudication of claims; (4) fixing a meeting of customers and other creditors, as required by Section 341 of the Bankruptcy Code (11 U.S.C.); and (5) establishing a schedule for interim reports by the Trustee, as required by 78fff-1(c) of SIPA.

With respect to securities customers and general creditors, the claims procedures proposed by the Trustee are identical to those embodied in orders entered by this Court and others throughout the country in literally hundreds of other liquidations under SIPA, including In re Lehman Brothers, Inc., Adv. No. 08-1420 (JMP) (Bankr. S.D.N.Y.). The procedures proposed with respect to commodities customers reflect, and conform to, the requirements imposed by the Commodity Broker Liquidation provisions of Subchapter IV, Chapter 7, of the Bankruptcy Code, 11 U.S.C. §§ 761-765, and the associated regulations, 17 C.F.R. part 190, as made applicable here, to the extent consistent with SIPA, by SIPA Section 78fff-1(b). Due to the need for prompt publication of the required notices and the earliest possible commencement of the claims process, the Trustee properly brings his application on an expedited basis.

The factual and procedural background underlying the Trustee's application are incorporated by reference here.

ARGUMENT

A. Overview of SIPA

In the wake of the failure of numerous securities broker-dealers, Congress enacted SIPA in 1970 "to protect individual investors from financial hardship; to insulate the economy from the disruption which can follow the failure major financial institutions; and to achieve a general upgrading of the financial responsibility requirements applicable to brokers and dealers in order to eliminate, to the maximum extent possible, the risks which lead to customer loss." See S.

Rep. No. 91-1218, at 3, 4 (1970) (“Senate Report”); H.R. Rep. No. 91-1613, at 2 (1970) (“House Report”).¹ Through SIPA, Congress sought to accomplish these objectives in two ways. First, it enhanced the power of the Securities and Exchange Commission (“SEC”) to establish financial responsibility rules for broker-dealers and to impose upon the securities industry’s self-regulatory organizations requirements for the financial examination of their members. See SIPA § 78iii(f). Second, it created SIPC,² made membership in SIPC mandatory for most broker-dealers, and empowered SIPC to commence proceedings for the liquidation of member broker-dealers whose financial condition posed the risk of loss to their customers. See SIPA §§ 78ccc(a) & eee(b). See also House Report at 11-13.

SIPC plays a central role in a statutory process designed to afford carefully delineated protection to securities customers against the financial risks posed by broker-dealer failure. That process begins with the SEC and/or the self-regulatory organizations.³ If the SEC or any self-regulatory organization believes that a member broker-dealer is in, or is approaching, financial difficulty, it must immediately notify SIPC. SIPA § 78eee(a)(1). If, upon such notice, SIPC determines that the referred broker-dealer has failed to meet its obligations to customers, or is in danger of failing to do so, and that one or more specified statutory conditions exists, it may apply

¹SIPA was extensively revised in 1978. See Securities Investor Protection Act Amendments of 1978, Pub. L. No. 95-293, 92 Stat. 249 (1978); Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 308, 92 Stat. 2549, 2675-76 (1978).

²SIPC is a private, non-profit, membership corporation. See SIPA § 78ccc(a)(1). Its Board of Directors consists of seven persons, five appointed by the President of the United States with the advice and consent of the Senate, and one each appointed by the Federal Reserve Board and the Secretary of the Treasury, respectively.

³The self-regulatory organizations consist of the national securities exchanges and the Financial Industry Regulatory Authority, Inc. (“FINRA”). 15 U.S.C. § 78c(a)(26).

to the appropriate federal district court for a "protective decree," adjudicating that the customers of such member are in need of the protection provided by SIPA. SIPA §§ 78eee(a)(3) and 78III(13). If the district court finds that at least one of the relevant statutory conditions exists, it must issue a protective decree, and must then appoint as trustee for the subject broker-dealer, and as attorney for the trustee, such persons as SIPC, in its sole discretion, shall specify. SIPA § 78eee(b)(1) and (3); SIPC v. Barbour, 421 U.S. 412 (1975). The proceeding thus commenced is a liquidation in which the trustee generally has the same powers and title with respect to the debtor broker-dealer and the debtor's property as a trustee in bankruptcy, including the right to avoid preferences. See SIPA §§ 78fff, 78fff-1(a).

SIPA does not attempt to make all customers whole, and SIPC is not an insurer of customer accounts. Rather, SIPA establishes a plan of limited protection in which SIPC's role is carefully delineated. SIPC administers a "quasi-public" fund established by SIPC via assessments upon its member broker-dealers.⁴ SIPA § 78ddd; SEC v. Packer, Wilbur & Co., 498 F.2d 978, 980 (2d Cir. 1974). SIPA contemplates that customer claims will be satisfied to the maximum extent possible from the assets (including customer property) on hand with the broker-dealer in liquidation. SIPC funds merely supplement those assets within the limits and in the manner provided in SIPA and are available solely as advances to the trustee for the satisfaction of protected customer claims and for other specified purposes. To the extent of these advances, SIPC has rights of subrogation and recoupment as specified in SIPA. See SIPA § 78fff-3(a) and 78fff-2(c)(1).

⁴SIPA authorizes SIPC to borrow up to \$2.5 billion dollars from the United States Treasury should SIPC's funds be inadequate to carry out its purposes. See SIPA §§ 78ddd(f), (g), & (h).

Under SIPA, however, these protections are available only with respect to securities customers of the failed SIPC member. The statute thus limits the definition of “customer” – which delineates the category of claimants eligible for SIPC advances, *inter alia* – to “any person...who has a claim on account of securities received, acquired or held by the debtor in the ordinary course of its business as a *broker or dealer* from or for the *securities* accounts of such person...” SIPA § 78lll(2)(A) (emphasis added). Thus, for SIPA purposes, “customers” eligible for SIPC protection include only those with assets held by the debtor for them as a securities broker-dealer in “securities,” not commodities accounts.

Despite the absence of SIPC protection for commodities customers, SIPA expressly contemplates the liquidation of a SIPC member operating as both a securities broker-dealer and futures commission merchant (“FCM”). Thus, where the debtor is both a securities broker-dealer and a “commodity broker” - a term defined in Section 101(6) of the Bankruptcy Code (11 U.S.C.) that encompasses any FCM - Section 78fff-1(b) of SIPA imposes upon a SIPA trustee the same duties as applicable to a trustee under the Code’s Commodity Broker Liquidation provisions, 11 U.S.C. §§ 761-767, to the extent that those duties are consistent with SIPA and with certain exceptions noted in SIPA.

B. An Order is Necessary to Implement SIPA’s Notice and Claims Provisions

To the extent consistent with SIPA, a SIPA liquidation is conducted in accordance with chapters 1, 3, and 5, and subchapters I and II of chapter 7 of the Bankruptcy Code (11 U.S.C.). See SIPA §78fff(b). Many of SIPA’s procedural requirements differ markedly from those applicable in bankruptcy liquidations, however. For example, the trustee and its counsel are designated by SIPC. SIPA §78eee(b)(3). Moreover, the trustee is responsible for mailing notice of the commencement of the SIPA proceeding to potential customers and creditors, but can do so

only after the bankruptcy court has determined the “form and manner” of notice. SIPA §78fff-2(a)(1). Would-be customers “need not file a formal proof of claim,” but must file “a written statement of claim;” must make that filing with the trustee, not the Court; and must do so within a period set by the Court not exceeding sixty days from the date of publication of notice to qualify for the maximum measure of protection available for “customer” claims under the statute. SIPA §78fff-2(a)(2).⁵

SIPA requires that notice of the commencement of the liquidation must be published and mailed to potential customers and creditors “in the form and manner determined by the court.” See SIPA § 78fff-2(a)(1). Courts presiding over SIPA liquidations routinely enter orders specifying detailed procedures governing these matters. See, e.g., In re New Times Securities Services, 318 B.R. 753, 755-56 (Bankr. E.D.N.Y. 2004), rev’d on other grounds, 337 B.R. 259 (E.D.N.Y. 2005), rev’d on other grounds, 463 F.3d 125 (2d Cir. 2006); In re A.R. Baron Co., Inc., 226 B.R. 790, 792 (Bankr. S.D.N.Y. 1998); In re Investors Center, Inc., 129 B.R. 339, 346 (Bankr. E.D.N.Y. 1991). The procedures proposed by the Trustee in his application with respect to notice and the filing and resolution of customers’ securities claims and general creditor claims are consistent with SIPA and generally track the procedures that have been followed in SIPA cases virtually since the enactment of SIPA. See, e.g., SIPC v. Saxon Secs. Corp., Fed. Sec. L. Rep. (CCH) ¶ 95,397 at 99,026 (S.D.N.Y. 1975). Further, because SIPA requires both prompt notice to potential customers and other creditors, and prompt filing of claims by would-be customers and creditors following notice - and because delay creates great risks, e.g., to

⁵SIPA sets an absolute limit of six months from the publication date for receipt of a claim. Claims for “customer” relief under SIPA – i.e., claims of securities customers - received after sixty days need not be paid out of customer property, however, and may be satisfied in the manner determined by the trustee to be most economical to the estate. SIPA §78fff-2(a)(3).

customers with claims for securities whose value may decline during the course of the proceeding - courts regularly enter such orders upon ex parte and/or expedited application by the Trustee. See, e.g., A.R. Baron, 226 B.R. at 792.

C. The Proposed Order Properly Implements the Notice and Claims Provisions

The order proposed by the Trustee provides the guidance necessary to implement the provisions of SIPA described above and to provide for an orderly liquidation of the Debtor. To ensure that the Court is apprised of the progress of the liquidation, the order requires the Trustee to file regular and periodic³ reports with the Court. Further, the order specifies the form of the notices required by SIPA, and the manner and timing of the publication and mailing of those notices.

The order also establishes comprehensive procedures for the filing, determination, and adjudication of claims in this SIPA liquidation. In accord with the fact that the Debtor operated as both a securities broker-dealer and an FCM - thus necessitating the separation of the Debtor's estate into a fund of property allocable to securities customers, one allocable to commodities customers, and a general estate - the proposed claims procedures includes separate claim forms, instructions, and filing deadlines for claimants in each category. Consistent with SIPA, the forms and procedures applicable to securities claimants and to general creditors conform to the requirements of SIPA and track those used in hundreds of prior SIPA liquidations, while the forms and procedures applicable to commodities customers conform to the requirements of the Bankruptcy Code's Commodity Broker Liquidation provisions and the associated regulations.

The content of the order proposed by the Trustee is tried and true. The proposed order is fully consistent with, and gives effect to, the applicable provisions of SIPA and the Commodity

Broker Liquidation provisions, and will effectively implement SIPA's notice and claims provisions.

CONCLUSION

For the reasons stated, the Court should grant the Trustee's application and should enter the order sought by the Trustee.

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Respectfully submitted,

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