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

In re

MF GLOBAL INC.,

Debtor.

Case No. 11-2790 (MG) SIPA

**TRUSTEE'S SECOND SIX MONTH INTERIM REPORT FOR THE PERIOD  
JUNE 5, 2012 THROUGH DECEMBER 4, 2012**

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TO THE HONORABLE MARTIN GLENN,  
UNITED STATES BANKRUPTCY JUDGE:

## **I. INTRODUCTION**

The six months represented by this Report have witnessed the substantial completion of several major facets of this liquidation. But the Report also marks the beginning of a critical phase of negotiation and potential litigation, which may determine the timing and extent of further distributions, as well as define the parameters of the size and extent of claims against the general estate.

Within one year of the Filing Date, the Trustee has effected transfers and distributions of billions of dollars of customer property. Most investigative and recovery efforts have now been successfully completed other than the major potential claims against insurers, JPMorgan Chase Bank, and former MF Global officers and directors, which are all well underway as described in the body of the Report. Offices have been closed, staff has been reduced, administrative expenses have decreased, and claims have continued to be processed and resolved with distributions made even in the midst of Hurricane Sandy. The Trustee has begun analyzing the general estate and filing motions to eliminate duplicative, amended and superseded, and other claims.

Perhaps most significantly, a customer claims process involving over 28,000 filed claims has been substantially completed in less than six months from the bar date. As detailed in the Report, of the over 28,000 commodities and securities claims filed in this proceeding, only approximately 200 have not been finally resolved; the Trustee expects to have the remainder resolved in the next few months through a combination of consensual resolutions and, when necessary, filing omnibus claims determination motions, a process which has already begun.

The resolution of so many claims in such a short period has allowed clarity with respect to both the possibilities of, and impediments to, further distributions. As described in the Report, the Trustee must maintain reserves that largely exhaust customer property of domestic futures customers, foreign futures customers, and securities customers presently available to him for remaining claims.<sup>1</sup> Although significant shortfalls would remain for both the foreign commodity futures and domestic commodity futures customers even with these issues resolved, the principal impediments to immediate further interim distributions to these customers, as well as to securities customers, are the large amount of 30.7 Property tied up in the UK and the hundreds of millions of dollars in claims filed by the Chapter 11 Debtors and MFG UK.

The Trustee has been reconciling claim amounts and has been involved in intense discussions with these parties during the last several months. He has discussed proposals with each of these parties designed to allow return of property and elimination of the major claims for which the Trustee must reserve. The Trustee does not wish to understate the difficulties and complexities of some of the issues involved. He believes, however, that a pragmatic, constructive approach on the part of all the parties and professionals involved has allowed these discussions to enter an advanced and critical stage. Successful resolution would, with Court approval, permit further distributions.

At least for commodities customers, however, the Trustee must caution that even successful resolution of these negotiations would not yield a one hundred percent distribution of allowed net equity claims. Achieving such an outcome would require substantial success in the pending litigations described in the Report, as well as

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1. Claims of the delivery class customers are being satisfied in full.

some significant allocation of non-segregated assets to the extent consistent with the Trustee's fiduciary duties and controlling principles of law.

At all points, the Trustee and his professionals have acted in close consultation with the Securities Investor Protection Corporation ("SIPC"), and also in consultation with the U.S. Commodity Futures Trading Commission ("CFTC"), the Securities Exchange Commission ("SEC"), and various Congressional Committees, particularly the Senate Committee on Agriculture, Nutrition and Forestry, the Senate Committee on Banking, Housing and Urban Affairs, the House of Representatives Committee on Agriculture, and the House of Representatives Committee on Financial Services. The Trustee's professionals also liaise with scores of former MFGI customers and other creditors every week as part of the ongoing effort to maintain the utmost transparency in this SIPA Proceeding.

1. James W. Giddens (the “Trustee”), as trustee for the liquidation of MF Global Inc. (“MFGI”) under the Securities Investor Protection Act (“SIPA”), 15 U.S.C. §§ 78aaa *et seq.*,<sup>2</sup> respectfully submits this Second Six Month Interim Report (this “Report”) in accordance with the terms of the Order of the Court entered on November 23, 2011 (ECF No. 423), and pursuant to SIPA § 78fff-1(c).

2. This Report covers the period from June 5, 2012 through December 4, 2012 (the “Report Period”).<sup>3</sup>

3. This Report, along with a complete docket, regular progress updates, and substantial other information about this liquidation, may be found on the Trustee’s website, [www.mfglobaltrustee.com](http://www.mfglobaltrustee.com).

## **II. PROCEDURAL BACKGROUND**

4. On October 31, 2011 (the “Filing Date”), the Honorable Paul A. Engelmayer, of the United States District Court for the Southern District of New York, entered an Order (the “MFGI Liquidation Order”) pursuant to SIPA in the case captioned *Securities Investor Protection Corp. v. MF Global Inc.*, Case No. 11-cv-07750.

5. The MFGI Liquidation Order, *inter alia*: (i) appointed James W. Giddens as Trustee for the liquidation of the business of MFGI pursuant to SIPA § 78eee(b)(3); (ii) appointed Hughes Hubbard & Reed LLP as counsel to the Trustee pursuant to SIPA § 78eee(b)(3); and (iii) removed the case to this Court as required for SIPA cases by SIPA § 78eee(b)(4) (the “SIPA Proceeding”).

## **III. FINANCIAL CONDITION OF THE ESTATE**

6. Information relating to the financial condition of the MFGI estate is contained in Exhibit 1.

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2. Subsequent references to SIPA throughout this Report will omit “15 U.S.C.”

3. The Trustee’s first six month interim report (the “First Interim Report,” ECF No. 1864) covered the period from October 31, 2011 through June 4, 2012. Additionally, the Trustee filed a preliminary report on the status of his investigation on February 6, 2012 (ECF No. 896) and a comprehensive report on his investigation and recommendations on June 4, 2012 (the “Investigative Report,” ECF No. 1865).

The Trustee has also filed four less detailed status reports, pursuant to this Court’s Claims Process Order (ECF No. 423), on January 12, 2012 (ECF No. 835), March 2, 2012 (ECF No. 977), August 6, 2012 (ECF No. 2758), and October 5, 2012 (ECF No. 3674). These reports have focused on the progress of the claims process and objections to the Trustee’s claim determinations. That claims process is now complete, as virtually all claims are determined and the remaining less than one percent of all public customer claims will either be resolved shortly or, to the extent consensual resolution is not possible, be subject to motions in the near future.

#### **IV. CLAIMS ADMINISTRATION**

7. In the months following the Filing Date, the Trustee sought to return customer property to customer claimants as quickly as possible through three commodities bulk transfers and one securities bulk transfer. For detailed information on these account transfers, *see* the First Interim Report Section V. Simultaneously, the Trustee sought Court approval of and implemented a claims process in accordance with SIPA, the commodity broker liquidation provisions of chapter 7 of the Bankruptcy Code (11 U.S.C. §§ 761–767, the “Commodity Broker Liquidation Provisions”), and 17 C.F.R. §§ 190.01–190.10 (the “Part 190 Regulations”). The claims process was put into motion within weeks of the Bankruptcy Court’s Order of November 23, 2011 (the “Claims Process Order,” ECF No. 423), which, among other things, approved the forms and procedures for filing, determining, and adjudicating claims. On December 2, 2011, in accordance with SIPA § 78fff-2(a)(1) and 17 C.F.R. § 190.02(b)(4), 74,763 claims packages were distributed by mail to former MFGI customers and other potential claimants, and the claims forms were also posted on the Trustee’s website ([www.mfglobaltrustee.com](http://www.mfglobaltrustee.com)). The Trustee also published notice of commencement of the claim process in *The New York Times*, *Chicago Tribune*, *Financial Times*, and *The Wall Street Journal* (*see* ECF No. 759).

8. The Trustee provided claimants with the option to file claims manually or electronically. Pursuant to SIPA § 78fff-2(a)(3), 17 C.F.R. § 190.02(d), and the Claims Process Order, commodity customer claims and securities customer claims seeking maximum protection under SIPA must have been received on or before January 31, 2012. All claims must have been received by June 2, 2012.

9. The Trustee maintains two electronic claims registers online at the Trustee’s website ([www.mfglobaltrustee.com](http://www.mfglobaltrustee.com))—a customer claims register and a general creditor claims register. Both registers provide the public access to all claims submitted in the SIPA Proceeding while providing appropriate protection for claimants’ personal information.

10. For additional statistical data regarding the claims process, *see* Exhibit 2.

##### **A. Commodities Customer Claims Overview**

11. The Trustee received over 27,000 timely filed commodities customer claims. The Trustee developed an efficient process to determine commodities customer claims. All of the more than 27,000 timely filed commodities customer claims have now been determined, with 26,610 allowed, 805 denied, and 81 reclassified to securities customer or general creditor claims. The allowed claims have a value of approximately \$6.7 billion.

12. To date, the Trustee has received 466 objections to commodities claim letters of determination (“LODs”), including claims of affiliates and matters already in litigation. The Trustee has established a team of professionals to contact claimants and discuss their claims and objections in an attempt to resolve objections without the need

for Court intervention. Through these efforts, the Trustee has already resolved nearly three quarters of these objections: 264 have been formally resolved, and the Trustee has agreed in principle on resolution of an additional 76. The Trustee's professionals continue to contact the remaining objecting claimants and, with respect to any objections that are not able to be resolved consensually with the claimant, the Trustee will move to resolve these objections in accordance with the Court-approved Claims Process Order, in omnibus fashion whenever possible. These claims amount to less than one percent of all commodities claims filed in this proceeding. Motions filed to date to resolve such issues are described in Section IV.C, *infra*. As discussed in Section IV.C, the Trustee has already moved to confirm his determinations of claims of former MFGI customers that used letters of credit as margin to support their commodity futures trading, claims for accounts that were empty or had a negative balance as of the Filing Date, and other miscellaneous claims, and has continued to litigate certain residual issues related to the Court's Order dated April 26, 2012 (ECF No. 1450) authorizing the first interim distribution (the "First Interim Distribution"). The Trustee anticipates that there may be more instances where the Court's determination is required with respect to claim objections. For more information regarding the remaining 126 objections that have not been resolved formally or in principle, *see* Exhibit 3.

13. With respect to allowed public customer claims without objection, the Trustee has implemented the Court-approved First Interim Distribution, making distributions to customers in each of the three customer account classes (*i.e.*, domestic futures accounts segregated pursuant to section 4d of the Commodity Exchange Act, foreign futures accounts secured pursuant to 17 C.F.R. § 30.7, and delivery accounts relating to physical customer property). As directed by the Part 190 Regulations, distributions to customers are pro rata among the members of each account class. Accordingly, customers with allowed claims to the domestic futures account class have received approximately 80 percent of their account value, customers with claims to the foreign futures account class have received approximately five percent of their account value, and customers with claims to the delivery account class have received a complete return of their property.

14. The First Interim Distribution has been made on a rolling basis to those public customers who filed claims, did not object to the Trustee's determination of their claims, and returned valid releases.<sup>4</sup> Customers who object to any aspect of the Trustee's determination of their claims have not received a distribution as part of the First Interim Distribution. A significant number of claimants have not yet returned a signed release to the Trustee, and accordingly have also not received a distribution. Checks are generally issued within three weeks of receipt by the Trustee of a signed release. When a claim is transferred to a third party transferee, the Trustee's professionals wait 21 days to allow for any objections to the transfer before sending the transferee a release. Once the

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4. Some claimants received more than their pro rata share during the account transfer process, generally a few percent above the 80 percent range. These claimants will not receive funds in future distributions until distributions reach a percentage above that which they have already received. The Trustee has the right to recover such excess distributions, but does not believe that they will exceed the percentage distribution eventually made to all customers.



Trustee's professionals receive the signed release from the transferee, distribution checks are generally issued within three weeks.

15. The Trustee's goal and aspiration remains to return as close to 100 percent of allowed net equity claims as possible for customer property while maximizing value for all creditors. However, the size and timing of future distributions on customer claims remains dependent on the resolution of the major contingencies facing the Trustee, including matters pertaining to claims objections, particularly those of MF Global UK Ltd. and MF Global Holdings Ltd., and the extent of the availability of the 30.7 Property in the UK, as defined below. For more information on these contingencies, *see* Section VI, *infra*. At the present time, the Trustee has approximately \$890 million of assets on hand in the domestic futures customer property pool, against necessary reserves of approximately \$753 million, precluding any further distribution until such contingencies have been resolved. Similarly, the Trustee has approximately \$179 million on hand in the foreign futures customer property pool, against necessary reserves of approximately \$114 million. The Trustee has been involved in extensive reconciliation efforts and discussions with these parties, which he believes may resolve some of these issues in a manner that will permit further distributions.

16. A full distribution will, however, require successful litigation or negotiated resolution of claims against third parties as well as some allocation of property from other sources to customer property, to the extent consistent with the Commodity Exchange Act, CFTC regulations, and SIPA.

## **B. Securities Customer Claims Overview**

17. As detailed in the Trustee's First Interim Report (*see* the First Interim Report Section V.B.), by Order dated December 12, 2011 (ECF No. 718), the Trustee was authorized to transfer MFGI's non-affiliate securities customer accounts to Perrin, Holden & Davenport Capital Corp. (together with its clearing company Lek Securities Corporation, the "Transferee"). As a result, the Trustee was able to facilitate the expeditious transfer of 318 customer accounts (having an aggregate value in cash and securities of approximately \$237 million) to the Transferee, allowing approximately 80 percent of the 225 customer relationships with transferred accounts to realize a full return of their net equity claims within a few months of the Filing Date. The remaining non-affiliate securities customers received between 60 percent and 90 percent of the value of their accounts, depending upon the size of their accounts and their entitlement to SIPC protection. Notwithstanding the account transfers, all securities account holders maintained the right to file a formal proof of claim for any balance of securities or cash not transferred.

18. Before reclassification, the Trustee received over 1,000 securities customer claims. The Trustee has now substantially completed determining all claims. Since March 31, 2012, the Trustee's securities team has been involved in the reconciliation of securities customer claims that have been filed to date, the preparation and issuance of letters of determination, and in explaining such determinations to former customers.

19. Every claimant has either received a notice of the Trustee's determination or has been contacted by the Trustee's professionals to discuss resolution of the claim. In total, 207 claims have been allowed, 119 denied, and 677 reclassified to commodities customer or general creditor claims. The allowed claims have a value of approximately \$276 million.

20. Thus far, the Trustee has received 23 objections to securities claim determinations. The Trustee has begun a process of contacting the objecting claimants to attempt to reach resolutions without the need for Court intervention, and believes that relatively few of these claims will need to be resolved through motions.

21. The Trustee's goal and aspiration continues to be to return as close to 100 percent of allowed securities net equity claims as possible from securities customer property. As with the commodities claims, the size and timing of future distributions on securities claims is dependent upon the outcome of the Trustee's determination of the disputed securities customer claims, particularly the claims filed by MF Global Holdings Ltd. and its affiliated debtors, and MFGI's former foreign affiliates. These former affiliates have not received any distributions to date on account of their customer claims. The Trustee is required to maintain adequate reserves against securities customer property to pay such claimants in the event that their claims are allowed by the Court or by agreement of the parties with Court approval. For a further description of contingencies relating to claims of MFGI's affiliates, *see* Section VI, *infra*. At the present time, the Trustee has approximately \$287 million of assets on hand in the securities customer property pool, against necessary reserves of approximately \$781 million, precluding any distributions until such contingencies have been resolved. The Trustee has made proposals to the trustee for MF Global Holdings Ltd. ("MFGH") and its affiliated chapter 11 debtors (collectively, the "Chapter 11 Debtors") with respect to a consensual resolution of most claims, which are in an advanced stage of discussion and which, if completed, should allow 100 percent distributions on allowed claims to be made.

### **C. Customer Claims Litigation**

22. Already moving forward is litigation to confirm the Trustee's determination of claims of former MFGI customers that used letters of credit as margin to support their commodity futures trading. Only three former customers, ConocoPhillips Company, ConocoPhillips Canada Marketing & Trading ULC (together "ConocoPhillips"), and Koch Supply and Trading, LP ("Koch"), have objected to the Trustee's determination that the full value of letters of credit posted as margin is customer property subject to pro rata distribution under the Part 190 Regulations (ECF Nos. 2192, 2532). To confirm his claim determinations, the Trustee is currently engaged in parallel litigation proceedings with ConocoPhillips and Koch, with Levine Lee LLP serving as special counsel in connection with Koch (*see* ECF No. 2794). The CFTC has submitted papers in support of the Trustee in both the ConocoPhillips and Koch disputes.

23. On July 30, 2012, the Trustee filed in the Bankruptcy Court a Motion for an Order Confirming the Trustee's Determination of ConocoPhillips' Claims to Customer

Accounts Margined with Letters of Credit (ECF No. 2632). On August 8, 2012, ConocoPhillips moved to withdraw the reference from the Bankruptcy Court to the District Court with respect to the Trustee's motion (Case No. 12-cv-06014, ECF No. 1). Following briefing and oral argument, the District Court granted ConocoPhillips' motion to withdraw the reference (Case No. 12-cv-06014, ECF No. 26). Merits briefing is complete, and the matter is scheduled for oral argument before the Honorable Katherine B. Forrest on December 19, 2012.

24. On July 19, 2012, Koch initiated an adversary proceeding in the Bankruptcy Court seeking a declaratory judgment that it had no liability with respect to its expired letter of credit (Case No. 12-ap-01754, ECF No. 1). On the same day, Koch filed a motion to withdraw the reference from the Bankruptcy Court to the District Court (Case No. 12-cv-05596, ECF No. 1). The Honorable Naomi R. Buchwald heard oral argument on the motion to withdraw the reference on November 20, 2012, and the matter is *sub judice*. Pending a District Court ruling, the Trustee and Koch have both filed and responded to cross-motions seeking summary judgment in the adversary proceeding with briefing scheduled to be complete by December 21, 2012.

25. In addition to the letters of credit claims litigation, on November 28, 2012, the Trustee filed a motion to (i) uphold his determinations of certain claims for accounts that were in debit or empty as of the Filing Date, (ii) confirming the First Interim Distribution amount for Bimbo Foods Inc., and (iii) expunging related objections (ECF No. 4674). The motion seeks the Court's determination concerning certain objections that the Trustee has not been able to resolve consensually through discussion with the claimants. The motion seeks to uphold the Trustee's determinations of three claims and confirm the First Interim Distribution amount with respect to one claimant.

26. During the claims determination process described above, the Trustee's professionals reviewed the books and records of MFGI and determined that many claims were for accounts that were empty or had a negative balance as of the Filing Date. Accordingly, the Trustee issued letters of determination denying these claims. The Trustee received approximately 50 objections to determinations of claims related to accounts in debit or empty as of the Filing Date. The Trustee's professionals contacted these claimants and in many cases have agreed with the claimants on a consensual resolution of the objection. The Trustee was not able to reach such a resolution with the claimants subject to the motion.

27. The Trustee has also continued to litigate certain residual issues related to the Court-approved First Interim Distribution on allowed commodities customer claims. In April 2012, one claimant, Ms. Jill Zunshine, appealed the Order in Furtherance of Claims Processing Order (ECF No. 1449) and the First Interim Distribution Order (ECF No. 1450) to the District Court. Ms. Zunshine sought a distribution on her allowed commodities customer claim without having to execute and return to the Trustee a declaration and release form (the "Declaration and Release"), as required by the Court. However, Ms. Zunshine did not seek any stay of these Orders and, as a result, the Trustee has fully implemented the Claims Process Order and the First Interim Distribution Order, as described herein. During the Report Period, both the Trustee and SIPC filed briefs in

the District Court in opposition to Ms. Zunshine's appeal (*see* Case No. 12-cv-04139, ECF Nos. 8, 12). Currently, the appeal is fully briefed and *sub judice* before the District Court.

28. Another claimant, Mr. Keith Hamaker, sought this Court's authority to file a Declaration without a Release in order to receive a distribution on his allowed commodities customer claim. On November 13, 2012, the Court issued an order denying Mr. Hamaker's request, finding that no compelling circumstances warrant reconsideration of the Court's approval of the Trustee's Declaration and Release and that the doctrine of law of the case bars Mr. Hamaker's request (ECF No. 4430).

29. Additionally, the Trustee filed a motion (ECF No. 1785) to uphold his determination denying a \$150 trillion commodities claim and a \$49.1 billion securities claim with no support in MFGI's books and records, which was granted by the Court (ECF No. 2044).

30. The Trustee has also been served as a co-defendant with a complaint commencing an adversary proceeding by Mercuria Energy America Inc. ("Mercuria"), alleging that Mercuria is entitled to offset the full value of a pre-liquidation loan made by MF Global Finance USA Inc. ("FinCo") to Mercuria against Mercuria's claims for damages and the value of its account at MFGI. Mercuria is the holder of an allowed customer claim subject to claims by FinCo as a lien holder for financing the account. The underlying dispute between FinCo and Mercuria is in the process of being resolved, and the Trustee is part of the settlement solely for purposes of returning distributions on the customer claims as directed by the parties and having the duplicative FinCo claims to the account withdrawn. This agreement may serve as a template for a number of other allowed customer claims that had been financed by FinCo, further reducing objections and the need to reserve.

#### **D. General Creditor Claims Overview**

31. In keeping with SIPA and § 704(a)(5) of the Bankruptcy Code, the Trustee has initiated a comprehensive review and reconciliation of all general creditor claims filed in this proceeding to determine the validity and actual allowed amounts of such claims. In the interest of reducing the administrative and financial burden imposed on the Court and the MFGI estate and expediting the process, the Trustee filed his motion for approval of general creditor claim objection procedures and settlement procedures (ECF No. 3365), which was approved by the Court on October 11, 2012 (ECF No. 3765).

32. During the Report Period, the Trustee began the process of objecting to claims by filing his first through seventh omnibus objections to general creditor claims pursuant to § 502(b) of the Bankruptcy Code as made applicable to this proceeding by SIPA §§ 78fff(b) and 78fff-1(a) and Rule 3007(d)(1) of the Federal Rules of Bankruptcy Procedure. The first, second, third, fourth, and fifth omnibus objections (ECF Nos. 3134, 3575, 3954, 3957, 4234), expunging duplicative and amended claims, have been granted, expunging 134 claims for a total value of \$1,668,790,147.26 (ECF Nos. 3766, 4336, 4594, 4595, 4596). The sixth and seventh omnibus objections (ECF Nos. 4506, 4711)

seek to expunge 205 duplicative claims with a total value of \$2,151,210.21. The Trustee also filed an objection (ECF No. 3373) to a purported \$10 billion claim that was granted, expunging the claim (ECF No. 3767). Further omnibus and other objections will be filed on a regular basis.

33. The Trustee's preliminary analysis of general creditor claims reflects that more than 6,600 claims have been filed as general creditor claims against the MFGI estate, including affiliate claims, in an asserted amount of approximately \$22.8 billion (without ascribing value to unliquidated amounts).

34. In addition, of the more than 28,000 claims filed as customer claims against the MFGI estate, approximately 650 have been reclassified as general creditor claims. The Trustee estimates that the aggregate claimed amount for these reclassified claims is approximately \$582 million. Approximately 4,700 claims filed as general creditor claims were for commodity futures accounts. The Trustee estimates that the aggregate claimed amount for these claims is \$193 million. The vast majority of these claims were duplicative of claims originally filed as customer claims, and the Trustee will object to them as duplicative as part of the general creditor claims process. Approximately 100 of the reclassified claims were unique customer claims and have been reclassified as such and included in the customer figures reported above.

35. A total of 26 affiliate general creditor claims have been filed, asserting amounts totaling approximately \$2.3 billion.

36. Of the more than 6,600 claims filed as general creditor claims, including the affiliate claims, and the approximately 650 customer claims that have been reclassified as general creditor claims, approximately 770 claims seeking priority status under the Bankruptcy Code have been filed, with an asserted value of approximately \$48.2 million.

37. EPIQ Bankruptcy Solutions, LLC maintains Customer and General Creditor Claims Registers (the "Registers"). Parties-in-interest may review both Registers and filed claim forms at <http://dm.epiq11.com/MFG2/Project>. Representatives of the Trustee, including counsel, are not authorized to answer questions about specific claims or claim amounts other than from owners of the claim. Parties should take notice of the disclaimers accompanying both Registers and the notes associated with the Customer Claims Register.

## **V. MARSHALING OF CUSTOMER AND NON-SEGREGATED UNALLOCATED PROPERTY**

### **A. Accounts Established Under Trustee Control**

38. Immediately upon commencement of the SIPA Proceeding, the Trustee established accounts with the trust group of Union Bank, N.A. ("Union Bank," f/k/a Union Bank of California, N.A.) to hold property marshaled by the Trustee for the various MFGI estates. These accounts were set up to accumulate cash and securities held by or for MFGI for its customers or for its own account. Concurrently, the Trustee

continued closing MFGI bank accounts that contained *de minimis* dollar balances on the Filing Date.

39. Upon his appointment, the Trustee located and recovered MFGI property—whether commodities customer, broker-dealer customer, or non-segregated unallocated property. The Trustee has collected substantially all material U.S. dollar balances that were held in MFGI bank accounts at domestic banks. His efforts to collect remaining property of all types continues. The Trustee is in the process of closing all MFGI bank accounts that contained *de minimis* dollar balances on the Filing Date. Major foreign currency balances in bank accounts outside the U.S. have also all been marshaled.

#### **B. Recovery of Commodities Customer Property**

40. In operation, MFGI's commodities customer property was maintained at either Depository Clearing Organizations ("DCOs") or in segregated bank accounts. All customer property at DCOs as of the Filing Date that was not transferred to customers during the account transfer process is under the Trustee's control at Union Bank. Property related to customers' trading on foreign futures exchanges was held at carrying brokers worldwide. During the Report Period, the Trustee successfully marshaled approximately \$49 million in 30.7 funds from three of the carrying brokers and banks. The Trustee's counsel is in active negotiations with the remaining carrying brokers to collect assets and close the accounts, each of which has agreed in principle to return the funds.

41. Though the Trustee has been able to marshal considerable property, some sums still have not been returned to the Trustee. The Trustee is aware of all unreturned property and has reserved his right to collect it from these holdouts. A majority of the property not recovered is in the form of cash or cash equivalents, but some of the value derives from exchange memberships. The paragraphs below summarize the results of recovery efforts at the exchanges, clearinghouses, and banks.

#### **C. CME Group Inc. ("CMEG")**

42. On the Filing Date, MFGI property held or controlled by CMEG totaled over \$175 million. On June 14, 2012, the Trustee filed a motion for approval of an agreement between the Trustee and CMEG (the "CME Agreement") providing for the return of MFGI property, extinguishment of duplicate claims filed with CMEG, and allocation of MFGI property to customers of the MFGI estate (the "CME Motion," ECF No. 2029). After briefing and a hearing on the CME Motion, on August 10, 2012, the Court entered a Memorandum Opinion and Order (together, the "CME Order," ECF Nos. 2824, 2825) granting the CME Motion and approving the CME Agreement.<sup>5</sup> Since entry of the CME Order, over \$130 million of MFGI property was returned by CMEG to the Trustee and allocated to customer estates per the CME Agreement's terms. The Trustee

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5. Despite the fact that no timely appeal was filed, on August 29, 2012, Paul Hamann filed a request for certification of his appeal of the CME Order with the United States Court of Appeals for the Second Circuit (ECF Nos. 3457, 3458). The Trustee will respond to Mr. Hamann's request as appropriate.

and his professionals continue to work with CMEG to liquidate and/or sell MFGI's memberships on various CMEG exchanges as well as dispose of claims asserted under the rules promulgated by the CMEG exchanges, pursuant to the terms of the CME Agreement.

**D. Other Exchanges**

43. Virtually all property has been recovered from the Intercontinental Exchange, the Options Clearing Corporation, the Kansas City Board of Trade, the Minneapolis Grain Exchange, New York Portfolio Clearing, and the International Derivatives Clearing House. To the extent any amounts remain at these exchanges, the Trustee continues to negotiate their return under terms similar to those reached with CMEG.

**E. Depository Trust & Clearing Corporation ("DTCC")**

44. The Trustee continues to work toward the complete return of property from DTCC to the Trustee. Assets that remain at DTCC are those frozen by DTCC for reasons other than MFGI's liquidation. DTCC and the Trustee expect that those positions should transfer within the next several weeks. DTCC has returned \$235 million in cash to the Trustee, and the Trustee and DTCC will continue to work together regarding the return of the \$17 million in cash that remains with DTCC.

**F. JPMorgan Chase Bank, N.A. ("JPMC")**

45. On November 9, 2011, the Trustee requested that JPMC return property—both customer and non-segregated unallocated assets—held in MFGI accounts at JPMC. JPMC subsequently returned over \$519 million of non-segregated unallocated assets and \$89 million of customer assets.<sup>6</sup> Return of the majority of MFGI non-segregated unallocated funds was made contingent upon the preservation of JPMC's set off rights and security interests, including a return of \$168 million on May 17, 2012, which was widely reported in the press. Affirmative claims that the Trustee is investigating and discussing with JPMC based on pre-Filing Date conduct are addressed in the Investigative Report. During the Report Period, the Trustee has continued to engage in active discussions with JPMC regarding the claims, in hopes of resolving disputes without litigation and for the benefit of customers and the estate.

**G. Bank of New York - Mellon ("BNYM")**

46. In late December 2011, the Trustee began requesting that BNYM turnover to the Trustee or transfer MFGI assets (both customer and non-segregated unallocated assets) on deposit at BNYM (domestic and international). Owing in large measure to alleged competing claims of ownership over accounts from MF Global UK Ltd. and an

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6. U.S. dollar value of assets determined using Filing Date values for securities and present date conversion rates for foreign currency.

alleged BNYM security interest in MFGI's property, it was not until late February 2012 that BNYM agreed to proceed with those transfers, which settled in mid-March.

47. Using Filing Date values, BNYM has returned, or transferred at the Trustee's request, a total of \$222 million. Customer property comprises \$43 million of this (\$27 million to Lek Securities Corp. and \$16 million to the Trustee). The Trustee recovered \$179 million in non-segregated unallocated property.

#### **H. Closeouts and Unwinds**

48. The Trustee and his professionals have continued to work diligently on the recovery of value from the unwinding of financial products transactions between MFGI and other broker-dealers, financial institutions, and other parties. For a description of the transactions involved, *see* the First Interim Report Section VI.I.

49. During the Report Period, the Trustee collected approximately \$6.3 million from seven counterparties that owed termination amounts to MFGI. The Trustee has now collected in total approximately \$85 million of non-segregated unallocated assets.

50. There remain a number of counterparties who the Trustee has identified as owing termination amounts to MFGI as of the Filing Date. The Trustee and his professionals have contacted or are currently in active negotiations with the remaining counterparties. The remaining termination amounts owed to MFGI as of the Filing Date amount to between \$25 million and \$30 million in the aggregate. The Trustee continues to work with these counterparties and their counsel to reach an agreement on the closeout value and collect the termination amount due to MFGI on a consensual basis wherever possible.

### **VI. FORMER MFGI AFFILIATE MATTERS**

#### **A. MF Global Holdings Ltd. Matters**

51. The Trustee and his professionals have engaged in active discussions with the trustee (the "Chapter 11 Trustee") for the Chapter 11 Debtors. Pursuant to these discussions, the Trustee's professionals along with MFGI personnel have devoted hundreds of hours to producing data and documents voluntarily to the Chapter 11 Trustee, and answering questions posed by the Chapter 11 Trustee's professionals in emails, conference calls, and in-person meetings.

52. Substantial amounts are presently reserved for the claims of the Chapter 11 Debtors. These amounts total approximately \$110.3 million for commodities claims and approximately \$556.5 million for securities claims. In May of this year, the Trustee issued determination letters denying customer protection to each of the securities claims and denying customer protection to the commodities claims filed by MFGH and FinCo. On June 15, 2012, the Trustee issued determination letters as to the commodities claims filed by MFG Capital LLC, MF Global FX Clear LLC, MF Global Special Investor LLC,



and MF Global Market Services LLC, allowing certain of the claims as non-public commodities customer claims.

53. In August 2012, the Trustee filed consolidated intercompany claims against the Chapter 11 Debtors including: (i) a claim in the amount of \$89,121,319 based on intercompany receivables owed to MFGI as recorded in the Oracle GL System, (ii) a claim for the amount of the shortfall in the funds of securities and commodities customer property, (iii) a claim for all amounts owed on derivative, repurchase and securities and other financial contracts between MFGI and the Chapter 11 Debtors, and (iv) other contingent and unliquidated claims for any intercompany indebtedness or other open payables owed by the Chapter 11 Debtors to MFGI. The Trustee's professionals have also substantially reconciled the Chapter 11 Debtors' general creditor claims against MFGI.

54. The Trustee and the Chapter 11 Trustee, and their respective professionals, engage regularly in meetings and conference calls in furtherance of negotiating an efficient and expeditious resolution of their respective claims. The Trustee has discussed resolving the customer claims in a manner that he believes is consistent with the status of the accounts and would eliminate substantial parts of the reserves so that further interim distributions could be made, at least to the domestic futures and securities customers. These proposals are in what the Trustee considers an advanced stage of discussion.

## **B. MF Global UK Ltd. and Other Foreign Affiliate Matters**

### **i. United Kingdom**

55. MF Global UK Ltd. ("MFGUK"), based in London, was the principal European broker-dealer within MF Global. Prior to the Filing Date, there were extensive dealings between MFGI and MFGUK in the conduct of their businesses. MFGI, whether on its own behalf or on behalf of its underlying customers, traded futures and options outside the United States and Canada with or through MFGUK.

56. As a result of the insolvency of MFGUK, on October 31, 2011, certain partners of KPMG were appointed as the joint special administrators for MFGUK (the "JSAs"). Subsequent to their appointment, the Trustee and his professionals have worked extensively with the JSAs and their professionals in developing and sharing information about MFGI and MFGUK relevant to the administration of the respective estates. In addition, the Trustee was elected as a client representative to MFGUK's creditors' committee and has retained legal counsel in the United Kingdom. On March 27, 2012, the High Court granted the Trustee's application and issued an order recognizing the SIPA Proceeding as a foreign main proceeding in accordance with the United Nations Model Law on cross-border insolvency.

57. The Trustee's claims against MFGUK consist of the following:

- (i) A client claim of approximately \$911 million, which includes approximately \$700 million in property that should have been secured for former MFGI customers pursuant to 17 C.F.R. § 30.7 ("30.7 Property"). The

client claim also includes \$175 million transferred from MFGI to MFGUK on October 28, 2011, which originated from segregated customer funds in the U.S. (*see* Investigative Report at 130–36). The Trustee’s position is that MFGI continues to be entitled to recover all 30.7 Property, whether on the grounds that the 30.7 Property constitutes client money or client assets, or on other grounds available under applicable regulatory rules and legal principles. On May 3, 2012, at the urging of the Trustee, the JSAs made an application to the English High Court seeking directions concerning whether the customer property that is the subject of the Trustee’s client claim was or should have been segregated under English law. At a directions hearing on June 1, 2012, the High Court, at the Trustee’s urging for an early date, set the trial to begin on April 9, 2013.

(ii) A formal creditor claim of approximately \$462.8 million relating to collateral posted with respect to certain “repurchase to maturity” (“RTM”) transactions. The JSAs disputed the Trustee’s valuation and, specifically, the legal basis for that valuation. On July 4, 2012, the JSAs sought directions from the English High Court to resolve this dispute. A hearing on the dispute was held on October 23, 2012, and on November 1, 2012, the English High Court issued a judgment in favor of the JSAs and ordered that the Trustee reimburse the JSAs for the costs associated with the litigation of the application. The Trustee has thoroughly considered the judgment and potential grounds for appeal, and has determined that further litigation of this issue is not in the best interests of MFGI’s customers and creditors. As a result, the Trustee has not made an application to appeal the November 1, 2012 judgment. Resolution of the award of costs remains under discussion with the JSAs.

58. The JSAs have also filed customer claims against MFGI, which, net of duplicate claims, assert approximately \$258 million in commodities claims and \$147 million in securities claims. The Trustee has issued letters of determination to the JSAs concerning all these claims.

59. On June 18, 2012, the JSAs filed an application with the English High Court seeking directions as to whether or not the client money entitlement of a client of MFGUK in respect of an “open position” should be determined as at the date of the Primary Pooling Event (“PPE”): (1) by reference to the market value or any mark-to-market value as at the PPE; or (2) by reference to the liquidation value, *i.e.*, the amount at which the open position was subsequently closed out on a date after the PPE (the “Hindsight Proceeding”). The English High Court appointed two representative clients of MFGUK to argue the two sides of the case. The Trustee was not a party to the Hindsight Proceeding but, because the relevant part of the Trustee’s client money claim was prepared on the basis of values as at October 31, 2012, the outcome may impact the Trustee’s client money claim. Accordingly, the Trustee’s counsel monitored the submissions of evidence, expert testimony, and argument. A hearing on the application was held on October 30–31, 2012, and a decision by the English High Court remains pending.

60. Pursuant to a February 24, 2012 Information Exchange Agreement and Protocol, the Trustee and the JSAs have exchanged documents and information concerning their respective claims. The Trustee's professionals regularly correspond and meet with the JSAs' professionals with the aim of an efficient and expeditious resolution of the parties' claims. As with the Chapter 11 Trustee, the Trustee has made proposals that would resolve issues between the parties in this case on both sides of the Atlantic, and would determine claims, allow the reduction of reserves, and facilitate the eventual return of property. While there are many issues to resolve and potential conditions to any agreement, as with the Chapter 11 Debtors, the Trustee considers these proposals to be in an advanced stage of discussion.

**ii. Canada**

61. MF Global Canada Co. ("MFG Canada") was the Canadian broker-dealer within MF Global. Prior to the Filing Date, there were extensive dealings between MFGI and MFG Canada in the conduct of their businesses. As a result of the insolvency of MFG Canada, certain partners of KPMG were appointed as the trustees for MFG Canada (the "Canadian Trustees"). The Trustee and his professionals have worked extensively with the Canadian Trustees and their professionals in developing and sharing information about MFGI and MFG Canada relevant to the administration of the respective estates. In addition, the Trustee has retained legal counsel in Canada.

62. On January 31, 2012, the Canadian Trustees moved the Canadian Superior Court to determine the Trustee's net equity claim under Canadian law. The Canadian Trustees' motion sought a determination of the net equity of the Trustee's claim and proposed to offset against the Trustee's claim all claims that the Canadian Trustees had made in the MFGI estate. The Trustee disputed the Canadian Trustees' proposal, as the bulk of both estates' claims concerned customer omnibus accounts that MFGI and MFG Canada had held on behalf of each others' customers.

63. On March 5, 2012, the Trustee made the following claims in the estate of MFG Canada: (i) a net intercompany receivable balance due to MFGI, as a creditor, of approximately \$500,000, (ii) a claim by MFGI, on its own behalf, as a foreign futures customer of MFG Canada, of approximately \$900,000, and (iii) a claim by the Trustee on behalf of MFGI's foreign futures and foreign options customers of approximately \$103 million.

64. The Trustee and the Canadian Trustees have resolved their dispute without further litigation. A settlement agreement was agreed between the Trustees, approved by the Canadian Trustees' inspectors, and approved by both the U.S. Bankruptcy Court and the Canadian Superior Court. Under the terms agreed upon by the Trustees, the Canadian Trustees will withdraw their claims in the MFGI liquidation and approximately \$62 million of customer property is expected to be returned to the Trustee.

**iii. Other Former Affiliates**

65. Several other former affiliated companies of MFGI have submitted customer claims. The Liquidator of MF Global Australia Limited filed commodities claims of

approximately \$15 million and securities claims of approximately \$3 million. The Liquidator of MF Global Holdings HK Limited filed commodities claims of approximately \$9 million and securities claims of approximately \$3,000. Net of duplicates, the Liquidators of MF Global Singapore Pte. Limited filed commodities claims of approximately \$13 million and securities claims of approximately \$400,000. Letters of determination concerning each of these claims have been sent to the respective administrators. There appear to be no material disputes concerning these claims.

## **VII. RETURN OF MISDIRECTED FUNDS**

66. Shortly after the Filing Date, the Trustee began receiving reports of funds being sent to MFGI bank accounts in error, including funds intended for the benefit of parties that were previously MFGI customers, but whose accounts were transferred after the Filing Date (“Misdirected Wires”). In the normal course of business, financial institutions can recall funds sent in error with relative ease. However, because MFGI is in liquidation, before returning any Misdirected Wires, the Trustee must investigate the underlying transfers and confirm that the funds were in fact sent in error and are not the property of the MFGI estate.

67. To facilitate the return of Misdirected Wires and to increase the overall efficiency of responding to requests for such returns, in November 2011, the Trustee implemented certain Court-authorized procedures (*see* ECF No. 417, the “Misdirected Wires Order”). The Trustee has also closed most of the bank accounts identified as having received Misdirected Wires, thereby reducing future requests for Misdirected Wire returns. To date, the Trustee has returned approximately \$16.3 million in misdirected wires. For additional information on the Misdirected Wire procedures, *see* the Misdirected Wires Order or the Trustee’s website ([www.mfglobaltrustee.com](http://www.mfglobaltrustee.com)).

## **VIII. TRUSTEE’S INVESTIGATION**

68. The Trustee has the specific and important duty to conduct an investigation and prepare a report concerning “the acts, conduct, property, liabilities, and financial condition of [MFGI], the operation of its business, and any other matter, to the extent relevant to the liquidation proceeding.” 15 U.S.C. §78fff-1(d). In furtherance of this duty, the Trustee obtained authority from the Court by Order dated November 4, 2011 to issue subpoenas in furtherance of this duty (ECF No. 34), and thereafter pursued numerous avenues of investigation.

69. The first of the Trustee’s reports, his Preliminary Report on Status of His Investigation and Interim Status Report on Claims Process and Account Transfers (the “Preliminary Report”, ECF No. 896), was completed and issued on February 6, 2012. The Preliminary Report addressed the broad topics of (i) what happened during the final days of MFGI, (ii) parties that were the immediate recipients of transfers from MFGI during the final days and weeks of operation, and (iii) an initial assessment of the factors that contributed to the deterioration of MF Global’s liquidity position.

70. Concurrently with the First Interim Report, the Trustee filed his second report on the status of his investigation (the “Investigative Report,” ECF No. 1865). Thereafter, the Trustee’s professionals largely wound down their investigatory activities.

## **IX. GOVERNMENT AND THIRD PARTY INVESTIGATIONS**

71. The flow of requests to the Trustee for historical MFGI information from dozens of federal, state, and local government agencies continues. Cooperation with investigations by these agencies is of paramount importance to the Trustee and SIPC. In addition, the Trustee has received and is responding in due course to an ever-increasing number of non-party subpoenas issued in connection with various litigations and arbitrations around the United States. Together, the Trustee has made a total of over 428 document productions in response to these governmental and non-party requests and the Trustee expects to continue receiving and responding efficiently to such requests. Notwithstanding an appreciation for regulators’ and litigants’ need for MFGI historical information, the productions continue to be a significant expense for the MFGI estate.

### **Regulatory Matters**

72. As a result of the complexities of administering MFGI’s estate, the Trustee regularly meets and coordinates with the SEC, the Federal Reserve Bank of New York, the CFTC, the Financial Industry Regulatory Authority, and the British Financial Services Authority. The Trustee is also terminating MFGI’s former broker-dealer registrations with federal regulatory agencies, including the SEC and the National Futures Association, saving the MFGI estate from the costs associated with maintaining its registration status.

## **X. LITIGATION**

### **A. Cooperation with Customer Representatives**

73. The Customer Representatives are customers of and former commodities account holders at MFGI who have brought class action claims against certain former officers, directors, and other employees of MFGI or MFGH, and other third parties. The Judicial Panel on Multidistrict Litigation has now consolidated these lawsuits in the Southern District of New York before the Honorable Victor Marrero, and the Customer Representatives have been named as interim lead plaintiffs for the putative class of similarly situated former customers of MFGI.

74. The Trustee and the Customer Representatives share a common interest to maximize recovery for MFGI customers, while minimizing the litigation costs associated with the prosecution of claims to secure such recovery.

75. To further this common interest, the Trustee and the Customer Representatives entered into a Common Interest Agreement dated June 8, 2012 that provides, among other things, for the coordination of discovery to advance their respective claims against the former officers, directors, and other employees of MFGI or MFGH, and other third parties, and states the Trustee’s and the Customer

Representatives' intention that any information that is protected under the attorney-client privilege, work-product privilege, or other applicable privilege may be exchanged between the Trustee and the Customer Representatives and be within the common or joint interest privilege to the fullest extent permitted by law. The Trustee has proposed creating a document repository that would allow all parties access to materials relevant to the litigation. Most parties have agreed to the terms of the Trustee's proposed repository, but defendants have resisted, hindering the Trustee's ability to quickly and fairly share information in a cost-efficient manner. The Trustee continues to work toward establishing an information-sharing process satisfactory to all parties.

76. The Trustee and the Customer Representatives also entered into a Continuing Cooperation and Assignment Agreement that establishes a framework for cooperation between the Trustee and plaintiffs' counsel to actively and efficiently prosecute all claims through the currently pending litigation, with all recoveries distributed through the Trustee's claims process. To accomplish those goals, the Trustee assigned certain claims of the estate against the former officers, directors, and other employees of MFGI or MFGH, and against MF Global's independent auditor, to the Customer Representatives. The cooperation agreement supports the Trustee's goal to recover the missing customer funds and other recoveries in the most cost-effective, efficient, and equitable manner possible for the benefit of all of MFGI's customers and creditors, while conserving resources for the benefit of all of MFGI's customers and creditors. The Continuing Cooperation and Assignment Agreement was approved by Order the Bankruptcy Court on October 11, 2012 (ECF No. 3764), and Order of the District Court on October 19, 2012 (Case No. 11-cv-07866, ECF No. 375).

77. On November 5, 2012, the Customer Representatives filed a Consolidated Amended Class Action Complaint against former CEO Jon Corzine, former CFO Henri Steenkamp, former COO Bradley Abelow, former General Counsel Laurie Ferber, former Assistant Treasurer Edith O'Brien, former CFO Christine Serwinski, former Global Treasurer David Dunne, former Global Treasurer Vinay Mahajan, MF Global's independent auditor PricewaterhouseCoopers LLP, and CME Group, Inc. ("CMEG"), along with its subsidiary Chicago Mercantile Exchange, Inc. ("CME"), alleging, among other things, violations of the Commodity Exchange Act, breach of fiduciary duty, and negligence, among other causes of action (Case No. 11-cv-07866, ECF No. 382).

78. The Consolidated Amended Class Action Complaint includes claims against the directors, officers, and the independent auditor that were assigned by the Trustee to the Customer Representatives in the Continuing Cooperation and Assignment Agreement, asserted on behalf of commodities and securities claimants as bailee of customer property, as well as on behalf of the corporate entity for the benefit of general creditors.

79. The Trustee did not assign claims to the Customer Representatives concerning CMEG, CME, or any entity or person other than former directors and officers and the independent auditor. The Customer Representatives' counsel is pursuing claims against CMEG and CME on behalf of the class, and not on behalf of the Trustee or MFGI.

## **B. Pre-Liquidation Litigation**

80. As previously reported, on the Filing Date, MFGI was party to several affirmative litigation proceedings in Illinois state court. During the Report Period, the Trustee settled these claims and the Court approved the settlements (*see* ECF Nos. 2282, 2492, 2493). The Trustee may continue to pursue a few affirmative litigations, including an action commenced on May 21, 2009, *New Hampshire Ins. Co., et al. v. MF Global Inc.*, which existed prior to the initiation of the SIPA Proceeding. This claim involves insurance coverage for the “Dooley Incident” of unauthorized trading referenced in the Investigative Report, and is discussed in greater detail in Section XVI, *infra*.

## **C. Other Litigation**

81. In addition to participating in the claims litigation discussed above (*see* Section IV.C, *supra*), on June 15, 2012, the Trustee filed a statement (*see* Case No. 12-cv-03757, ECF No. 17) regarding Sapere Wealth Management LLC’s, Granite Asset Management’s and Sapere CTA Fund, L.P.’s (collectively, “Sapere”) appeal from the Bankruptcy Court’s memorandum opinion (Case No. 11-15059, ECF No. 400) denying Sapere’s request that the Commodity Broker Liquidation Provisions and the Part 190 Regulations should be applied to the Chapter 11 Debtors. The Trustee agreed with the Bankruptcy Court’s opinion that there is no legal basis for the relief requested by Sapere. On October 5, 2012, the District Court issued an opinion finding that the Bankruptcy Court’s memorandum opinion was not a final order subject to appeal, but rather interlocutory, and the District Court denied Sapere’s leave to appeal (Case No. 12-cv-03757, ECF No. 20). Sapere has appealed the District Court’s ruling to the United States Court of Appeals for the Second Circuit (Case No. 12-cv-03757, ECF No. 23).

82. On October 9, 2012, the claims against MFGI were dismissed in the adversary proceeding commenced by a class of former employees of various MF Global entities who allege violations of the Federal and New York State Worker Adjustment Restraining and Notification (“WARN”) Acts, which require an employer to give 60 days and 90 days notice, respectively, of a plant closing or mass layoffs (Case No. 11-ap-02880, ECF No. 62).

83. On November 26, 2012, the Commodities Customer Coalition filed a motion seeking to depose former CEO Jon Corzine and other former officers and directors of MF Global pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (ECF No. 4592). The Trustee is evaluating his response to this motion in light of, among other things, its possible effect on the customer class actions discussed in Section X.A, *supra*, involving the conduct of the same officers and directors.

## **XI. DATA MANAGEMENT**

84. For purposes of his investigation, as well as to respond to the numerous requests from legislators, law enforcement agencies, and regulators, the Trustee undertook extensive efforts to collect and preserve MFGI documents, data, and other information.

85. Immediately following the commencement of the SIPA Proceeding, the Trustee deployed a team of professionals, including attorneys experienced in broker-dealer liquidations and expert consultants and forensic accountants from both Deloitte and Ernst & Young, to secure all MFGI premises, data, books, and records. The categories and quantities of information preserved, amounting to over 100 terabytes of data or the equivalent of approximately one-third of the contents of the Library of Congress, are described in detail in the First Interim Report Section XII.

86. In addition to the efforts to preserve documents and data that had been located in MFGI offices, the Trustee has also sent preservation notices to over 50 third parties and individuals, instructing them to preserve all MFGI documents and information in their possession.

## **XII. TAX MATTERS**

87. The Trustee's professionals are monitoring and responding to federal and state tax audits, coordinating responses to requests for tax-related information from federal and state authorities, and overseeing compliance with tax reporting requirements.

### **A. 1099 and Related Reporting**

88. All required Forms 1099 and 1042-S for 2011 were timely mailed to recipients. The Trustee has established a call center to answer customers' questions regarding these Forms; the toll-free call center number was printed on all Forms 1099 and Forms 1042-S, and appears on the Trustee's website. The call center continues to receive calls, which are routed to a voice mailbox where callers can leave messages. The calls are returned within three business days.

### **B. The MF Global Consolidated and Combined Groups**

89. Beginning with its tax year commencing April 1, 2011, MFGI is included in the consolidated federal income tax returns filed by the affiliated group of which MFGH is the common parent. For tax years prior to April 1, 2011, MFGI was similarly included in consolidated returns, but the common parent of the group in those years was MF Global Holdings USA Ltd. ("MFGH USA"). MFGH USA and the other members of the former MFGH USA group are currently included in the MFGH consolidated group. Under applicable U.S. Treasury regulations, the common parent of a federal consolidated group is the sole agent for the consolidated group and has authority to act with respect to all matters relating to the federal income tax liability of itself and the members of the group, including audits and refund claims. All members of the group are severally liable for all of the group's federal income tax liability for all periods during which they are members of the group. MFGI is a member of similar groups for purposes of income or franchise taxes in several states and cities, including New York State and New York City. Such a group is generally referred to for state law purposes as a "combined group," which files a combined return.



### **C. Tax Audits and Refund Claims**

90. The MFGH USA consolidated group was under federal income tax audit for its tax years 2007 to 2011 before the commencement of the SIPA Proceeding. On November 19, 2011, the group filed a federal refund claim for approximately \$22 million based on carryback of a net operating loss. The refund has not, as yet, been allowed. The audit is currently suspended while the IRS seeks the approval of the Joint Committee on Taxation to proceed.<sup>7</sup>

91. On July 27, 2012, the Trustee and MFGH USA jointly filed a protective claim for a refund of telecommunications excise tax and jointly engaged Tax Projects Group, LLP on a contingency fee basis to assist in obtaining the necessary documentation to support the claim. On October 11, 2012, the IRS issued an information document request asking for additional information regarding the claim. The Trustee's professionals maintain ongoing discussions with representatives of MFGH USA and Tax Projects Group, LLP, as to the status of the refund claim and the provision of the requested information.

92. In addition, the IRS has assessed penalties against MFGI for years 2004 to 2008 and for 2010 that relate to errors on certain information returns. The Trustee's professionals are working to seek abatement of these penalties.

### **XIII. EXECUTORY CONTRACTS**

93. Since the Filing Date, the Trustee's professionals have undertaken extensive analysis to ascertain whether MFGI executory contracts and unexpired leases would be beneficial to the MFGI estate and further the purposes of the liquidation or should be noticed for rejection for cost-savings. To date, the Trustee has noticed over 400 executory contracts, eliminating several million dollars of administrative expense. In order to complete this process, the Trustee has sought and this Court has approved an extension of the time within which the Trustee may assume, assign, or reject MFGI executory contracts and unexpired leases, as provided in § 365(d)(1) of the Bankruptcy Code, to, and including, December 31, 2012 (ECF No. 2795) so that the Trustee may confirm that all ongoing contractual commitments have been resolved.

### **XIV. INTERNAL CONTROLS AND BOOKKEEPING**

94. The Trustee continues to employ professionals who oversee the performance of the major efforts and work-streams, provide guidance and review functions related to marshaling assets, assist with information and technological needs, support MFGI's operations, and provide consultative advice on various matters. The Trustee and his professionals continue to monitor MFGI's non-segregated unallocated assets, including soliciting and/or evaluating bids for such assets.

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7. Joint Committee approval is required because of the size of the claimed refund.

95. The Trustee's professionals have established certain daily, monthly, and ad hoc practices to support the processing of MFGI's former business in accordance with the liquidation. However, they are not comparable to that of an entity operating as a going concern.

## **XV. PROFESSIONAL RETENTION**

96. At the request of and in consultation with SIPC, nearly every professional firm and consultant retained by the Trustee has agreed to a voluntary "public interest discount" of 10 percent or more from standard rates and has further agreed not to charge for a number of categories of expenses regularly paid to professionals in large bankruptcy proceedings, including overtime meals, internal copies, and after-hours travel services.

97. Given the global nature of MFGI's business and that MF Global insolvency proceedings have been commenced in numerous jurisdictions, the Trustee requires counsel, in addition to Hughes Hubbard & Reed LLP, to attend to certain matters. The Trustee appoints and compensates counsel pursuant to Court-authorized procedures (*see* ECF Nos. 419, 1286).

98. During the Report Period, Slaughter and May continued to advise the Trustee regarding the MFGI estate's rights, duties, and powers in connection with the MFGUK Special Administration (*see* Section VI.B.i, *supra*); Blake, Cassels, Graydon LLP continued to advise the Trustee in connection with the MFG Canada proceeding (*see* Section VI.B.ii, *supra*); and Haynes and Boone continued to advise the Trustee on matters related to PricewaterhouseCoopers LLP (MF Global's auditors). In addition, on August 8, 2012, the Court authorized the Trustee to retain Levine Lee LLP (ECF No. 2794) to advise the Trustee on matters related to Koch arising from a certain letter of credit with MFGI (*see* Section IV.C, *supra*).

## **XVI. INSURANCE**

99. The Trustee's professionals have filed claims or notices of potential claims for insurance coverage relating to the events leading to MFGI's liquidation with various insurers that have issued insurance policies insuring MFGI and/or its customers. The Trustee's professionals have been in regular communication with MFGI's insurers regarding the status of its claims and continue to analyze the policies insuring MFGI to determine their applicability as sources of potential recovery for the MFGI estate. Those insurance policies include Directors & Officers ("D&O") Insurance, Professional Liability ("Errors & Omissions" or "E&O") Insurance, Excess SIPC Insurance, and a Fidelity Bond.

100. Beginning in early 2012, a group of commodities customers, led by Sapere Wealth Management, LLC, Granite Asset Management, and Sapere CTA Fund, L.P. (collectively, "Sapere"), objected to certain of MFGI's D&O and E&O insurers seeking to lift the automatic stay to pay defense costs to individuals under insurance policies that also insured MFGI (*see, e.g.*, Case No. 11-15059, ECF Nos. 416, 417, 419, 422, 477, 482, 484). The Trustee also filed a claim with MFGI's E&O insurers, which those insurers are investigating. The Trustee filed a statement with the Court, addressing

certain points raised by the objectors (Case No. 11-15059, ECF No. 489). The Trustee's position was that, while he would welcome the proceeds of any insurance policy, it was unclear whether Sapere had articulated a claim that presented the Trustee with an immediate right to recover the entire limits of those insurance policies, which also explicitly provide a right to defense costs to certain MFGH and MFGI employees. The Trustee did not object to lifting the stay to permit payment up to a specified amount for defense costs, provided the amount was a relatively small percentage of total coverage and that some reporting of payment amounts was made. In April 2012, Judge Glenn determined that there was cause to lift the automatic stay to permit the payment of defense costs to certain insureds of the D&O and E&O policies (*see* Case No. 11-15059, ECF No. 619, 652). Judge Glenn limited that order to permit payments up to a "soft cap" of \$30 million, at which time the parties and the Court could reevaluate whether continuing such payments would be appropriate, and ordered periodic reporting of amounts paid (*see* Case No. 11-15059, ECF No. 619 at 30–31).

101. Sapere appealed Judge Glenn's April 2012 ruling and moved to stay that order pending its appeal. Judge Forrest of the Southern District of New York denied Sapere's motion for a stay (*see* Case No. 12-mc-00143, ECF No. 17), and, after further briefing and argument in November 2012, affirmed Judge Glenn's April 2012 decision (*see* Case No. 12-cv-04597, ECF No. 20). Sapere recently filed a notice of appeal of that decision to the United States Court of Appeals for the Second Circuit (Case No. 12-cv-04597, ECF No. 23). The Trustee continues to pursue MFGI's claim against those E&O Policies and may reevaluate his position on whether the payment of defense costs continues to be proper once the initial \$30 million "soft cap" contemplated by Judge Glenn's order is reached. To date, approximately \$12.5 million in defense costs has been paid by the relevant E&O and D&O insurers.

102. On July 25, 2012, the Trustee's professionals submitted a proof of loss to the Fidelity Bond insurers for segregation failures at MF Global. The Trustee also continues to pursue recovery for the MFGI estate on a 2008 Fidelity Bond claim. That claim relates to the trading activities of Evan Dooley, who over the course of a single night of improper overnight trading in wheat futures in 2008, amassed more than \$141 million in losses. MFGI filed a claim with its Fidelity Bond insurers, which denied the claim and filed a declaratory judgment action in New York State Court, entitled *New Hampshire Ins. Co., et al. v. MF Global Inc.*, seeking a ruling that the Fidelity Bond did not cover the loss. The insurers asserted multiple grounds for denying coverage and moved for summary judgment on one of those grounds, *i.e.*, that MFGI did not sustain a direct loss. The New York Supreme Court ruled against the insurers, finding that MFGI did sustain a direct loss. The New York Supreme Court also found that Mr. Dooley was an employee of MFGI (one of the insurers' other grounds for denying coverage). The insurers appealed and, before the appellate argument occurred, the MFGI SIPA Proceeding commenced, staying those appeal proceedings. Since October 2011, the Trustee and his professionals have participated in ongoing meetings with the insurers to attempt to settle the claim, but no settlement has been reached. In November 2012, the insurers moved to lift the automatic stay to allow the appeal to proceed (ECF No. 4509). The Trustee is evaluating his response to this motion and expects to pursue litigation on his claim if the matter cannot be resolved consensually.

103. The Trustee and his professionals are also communicating with Lloyd's, which provides Excess SIPC Insurance for MFGI's customers, as it continues its monitoring of the status of the SIPA Proceedings and the recovery to MFGI's securities customers.

## **XVII. COMMUNICATIONS WITH CUSTOMERS**

104. The Trustee has continued to maintain channels of communication with customers, creditors, and the public to the extent that he can do so without detracting from his duties to marshal and return property, and without compromising the confidentiality of investigatory and recovery efforts.

105. The Trustee's website ([www.mfglobaltrustee.com](http://www.mfglobaltrustee.com)) is frequently updated with reports on the progress of the liquidation, statements on various issues, and court filings. The Trustee has also organized a call center with a standby roster of attorneys to answer inquiries quickly and address concerns where possible. To date, the Trustee's professionals have responded to over 21,000 inquiries through the general call center. Additionally, the Trustee's professionals have established two specialized call centers dedicated to inquiries relating to claims determinations and tax matters.

106. The Trustee or his lead counsel have also voluntarily appeared before Congress, upon request, five times, in addition to participating in conference calls and meetings with Congressional staff and constituents. Finally, the Trustee has previously filed or delivered orally to the Court several reports relating to his investigation, the claims process, and the general status of the liquidation (*see* ECF Nos. 835, 896, 977, 1864, 1865, 2758, 3674).

## **XVIII. REDUCTION OF ADMINISTRATIVE EXPENSES**

107. The Trustee continued to reduce the estate's real estate, physical assets, staff, and administrative expenses during the Report Period. This includes the rejection of the remaining real property leases in Chicago. As previously reported, the savings resulting from the rejection of all MFGI real property leases is, in the aggregate, approximately \$118 million. For information concerning the Trustee's efforts to reduce real estate, staff, and other administrative expenses immediately after the commencement of liquidation, *see* the First Interim Report Section XVIII.

108. Pursuant to Court Order authorizing the sale of remaining physical assets (ECF No. 2009), the Trustee hired Hyperams Asset Maximization Services ("Hyperams") to conduct a sale of physical assets through an online auction. The items for sale included artwork and promotional materials. The auction concluded in November 2012, and Hyperams now has a brief opportunity to sell remaining items that it did not sell in the auction, after which point it may dispose of the remaining items. The Trustee anticipates an auction report and summary from Hyperams in December, once Hyperams' work is complete.

109. The Trustee has moved the MFGI office equipment and supplies necessary to conduct the business of the liquidation to the estate's office in New York. Residual

office items that had no value were disposed of as part of the process of vacating the real estate. All estate technology has been identified and grouped into one of three categories. First, the Trustee moved technology that was determined to be necessary to run operations to a New York data center. Second, technology with data necessary to preserve has been identified and stored. Third, the Trustee identified and consolidated technology to be sold and, after requesting proposals, received six, which were each reviewed by the Trustee's professionals. The Trustee selected HiTech Assets, Inc., the highest bidder, which purchased the technology in late May 2012 for approximately \$400,000.

110. Under the Trustee's supervision, the MFGI estate has greatly reduced its employees and corresponding payroll. On October 31, 2011, MFGI employed 1,312 employees. As previously reported, the Trustee hired several hundred former MF Global employees on a temporary basis to assist with the liquidation. As of December 3, 2012, this number was reduced to nine employees. Payroll and payroll taxes for the Report Period totaled \$1,166,570.57, reduced from \$15,675,216 for the pay period ending October 31, 2011.

### **XIX. CONCLUSION**

111. The foregoing report represents a summary of the status of this SIPA Proceeding and the material events that have occurred from June 5, 2012 through December 4, 2012. It will be supplemented and updated with further interim reports.

Dated: New York, New York  
December 4, 2012

Respectfully submitted,

HUGHES HUBBARD & REED LLP

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Trustee for the SIPA Liquidation of  
MF Global Inc.

# **EXHIBIT 1**

# Financial Condition of the Estate:

## Customer Property Pools

Description	Amount in US Dollars in Millions (as of October 31, 2012)			
	4d Commodities Customers	30.7 Commodities Customers	Delivery Class Customers	Securities Customers
Amount of Claims Filed	\$ 8,608 <sup>1</sup>	\$ 1,162	\$ N/A <sup>2</sup>	\$ 1,406 <sup>3</sup>
Estimated Obligations Based on Claims Determined and Reserves <sup>4</sup>	6,233	1,059	106	1,039
Assets Marshaled to Date	5,321	294	120	527
Assets Transferred or Distributed	4,431	115	76	240
Assets Remaining	890	179	44	287

1. This amount does not include a \$150 trillion asserted claim that was filed late, had no support in MFGI's books and records or on its face, and that the Trustee has expunged with Court approval (ECF No. 2044).
2. Delivery class customers asserted claims relating to physical customer property in terms of that property (*e.g.*, five gold certificates), not in a dollar amount.
3. Customer obligations are presented on a net basis. For securities customer obligations, the gross balances are substantially greater. This amount does not include a \$49.1 billion asserted claim that has no basis in MFGI's books and records or on its face, and that the Trustee has expunged with Court approval (ECF No. 2044).
4. In estimating obligations based on claims determined and reserves, the Trustee's professionals calculated the aggregate value of determined customer claims, as well as reserves necessary for a number of contingencies described in the Trustee's Second Six Month Interim Report. The Trustee is obligated to reserve conservatively for these contingencies, but expects that the estimated obligations will decrease significantly as these contingencies are resolved.

The information and data included in this exhibit are derived from sources available to the Trustee and his professionals. This exhibit is based on the information available at this time. All amounts are unaudited and subject to revision.

# Financial Condition of the Estate: Overview of Non-Segregated Unallocated Assets

## Summary of Non-Segregated Unallocated Assets as of October 31, 2012

Unaudited (in Millions)

Cash and Cash Equivalents	\$	1,158
Securities		5
Total Non-Segregated Unallocated Assets on Hand	\$	1,163

The Trustee believes a portion of these assets will need to be allocated to commodities and securities customers at a future date under principles and in amounts that will be established by motion subject to Court approval.

The information and data included in this exhibit are derived from sources available to the Trustee and his professionals. This exhibit is based on the information available at this time. All amounts are unaudited and subject to revision.



## **EXHIBIT 2**

# Overview of the Customer Claims Process

## Claims (as of December 3, 2012)

	Commodities Customer Claims	Securities Customer Claims
Total Timely Claims Asserted	27,496 <sup>1</sup>	428
Determined And Final Claims <sup>2</sup>	27,474	418
Determined But Not Final Claims <sup>3</sup>	22	4
Undetermined Claims	0	6 <sup>4</sup>
<b>Total Claims Determined</b>	<b>27,496</b>	<b>422</b>

## Discrete Objections (as of December 3, 2012)

	Commodities Customer Claims	Securities Customer Claims
Total Objections to LODs	466	23
Resolved Objections <sup>5</sup>	340	0
Pending Objections	126	23

1. Includes 559 claims timely asserted as securities customer claims that the Trustee has reclassified as commodities customer claims and 108 claims asserted as general creditor claims that the Trustee has reclassified as commodities customer claims.
2. Includes claim determinations for which the claimants have executed releases and/or for which the period to object has expired.
3. Includes claim determinations for which the period to object is still running.
4. These 6 claims are currently undergoing the final determination process.
5. Includes objections that are resolved in principle.

The information and data included in this exhibit are derived from sources available to the Trustee and his professionals. This exhibit is based on the information available at this time. All statistics are still under evaluation and are subject to revision.

## **EXHIBIT 3**

# Summary of Unresolved Commodities Customer Claim Objections

## Unresolved Commodities Customer Claim Objections (as of December 3, 2012)

Claim Type/Issue	Number of Unresolved Objections
Late Claims	38
Account Valuation Disputes	28
Commissions	11
Affiliate Objections	8
Introducing Broker Security Deposits	6
Non-Public Customers	5
Claimants Allege Error in MFGI Records	4
Empty Accounts	4
Claimants Allege Fraud	3
Trading Margined by Letters of Credit	3
Accounts Financed by FinCo	3
Miscellaneous Others	13
<b>Total Pending Commodities Customer Claim Objections</b>	<b>126<sup>1</sup></b>

1. The 126 unresolved objections relate to 167 filed customer claims.

The information and data included in this exhibit are derived from sources available to the Trustee and his professionals. This exhibit is based on the information available at this time. All statistics are still under evaluation and are subject to revision.