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Attorneys for Commodity Customer Coalition

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

In re:

**MF GLOBAL HOLDINGS,
LTD, *et al.*,**

Debtors.

In re:

MF GLOBAL INC.,

Debtor.

Chapter 11

Case No. 11-15059 (MG)

Jointly Administered

Case No. 11-02790 (MG) (SIPA)

**AMENDED OBJECTION TO THE SIPA TRUSTEE'S EXPEDITED APPLICATION FOR
ENTRY OF AN ORDER ESTABLISHING PARALLEL CLAIMS PROCESSES, ETC.**

Certain commodity broker customers (the “Commodity Customer Coalition”)¹ of MF Global Inc. (“MFGI”), hereby file an amended objection to the Trustee’s Motion for an Order: (1) establishing parallel claims processes for commodity futures customer and securities customer claims; (2) approving the form and manner of the publication and mailing of the notice of commencement of this proceeding; (3) specifying procedures and forms for the filing, determination, and adjudication of claims; (4) fixing a date for the entry of a meeting of customers and other creditors; and (5) fixing an interim reporting procedure pursuant to SIPA. In support of their objection, the Commodity Customer Coalition states:

1. The Commodity Customer Coalition (“CCC”),² a grass roots organization and represents a growing number of former MF Global clients, currently numbering over 7,000, provides this amended objection to the Trustee’s Motion to address the following issues: (i) the currently proposed plan is too cumbersome and, as a result, will do more harm to the already injured commodity customers of MF Global; (ii) the Trustee must recognize the need to fill any shortfall in customer accounts, through asset liquidation and claims, as part of the liquidation plan; and (iii) the Trustee is not taking input from the industry, which is a high-speed industry filled with innovative, intelligent professionals who are eager to get themselves and their clients back to work. In short, CCC believes that the Court should not approve a comprehensive, parallel, claims process until the

¹ The Commodity Customer Coalition speaks on behalf of over 7,000 MF Global Customers. Within that group, about 80 representatives have formally retained Mr. Koutoulas as pro bono counsel, including, a hog farmer from central Illinois, as well as those other customers listed on Exhibits A, B and C, have more than \$80 million held in customer segregated accounts frozen.

² The CCC is organized by a volunteer group of commodity futures professionals who are working on a pro bono basis to represent MF Global customers in the bankruptcy process. In a very short time, the group has created electronic communication networks, a website, organized thousands of customers with frozen assets, and is working on behalf of all MF Global commodity account holders to ensure the swift and complete return of these assets.

Trustee addresses these issues by accepting input from industry experts and agrees to a more efficient process (presumably along the lines below) for commodities customers.

2. There are three problems with the Trustee's plan, none of which have been addressed. The primary problem with the Trustee's proposed claim form and claim process is that it is far too cumbersome for commodities customers and ignores the up-to-date and verified data the MF Global has to identify and then distribute commodities customer property. The claim form can and should be married to the MF Global account statements – and even could be distributed to customers along with a month-to-date account statement generated from MF Global's backoffice system, SunGard's Stream GMI – in order to ensure it is simple and the process as efficient as possible.

3. The next problem with the Trustee's plan is that it fails to recognize the need to fill any shortfall in the customers' accounts through asset liquidation and/or a claims process. According to CFTC Regulation § 190.08(a)(ii)(F), property converted from a customer remains customer property. *Accord*, 11 U.S.C. § 761(10)(a)(vii)(customer property includes "property that was unlawfully converted from and that is the lawful property of the estate"). In addition, CFTC Regulation § 190.08(a)(1)(ii)(J) also provides that "customer property" includes all other assets of the debtor's estate to the extent of any shortfall in segregated customer funds. Assuming, as the Trustee's counsel has acceded in open court, customers will receive a first-priority distribution (as required by 11 U.S.C. § 766(h)) in this SIPA liquidation, the customers are entitled—on the same first priority basis—to receive the liquidation value of all assets of MF Global, Inc.'s estate and any money that MF Global, Inc. is entitled to receive because of the conversion of customer funds.

4. The final problem with the Trustee's plan is that the Trustee has refused input from the industry—and clearly does not understand the industry. On November 17, 2011, at the Court's urging, the Trustee held a meeting to "meet and confer with counsel for parties that have specific

objections to the Trustee's pending claims procedures application." In advance of that meeting, the CCC provided a written submission with the broad outlines of a simple plan for a claims process for the commodities customers. Yet, during that meeting, counsel for the Trustee argued that the only purpose of the meet and confer was to discuss the claim form. Counsel for the Trustee then left the meeting without discussing the claim process itself, outside of the form. Nearly contemporaneously with this amended objection, CCC is filing a motion seeking the appointment of an *Ad Hoc* Committee, to be filled with industry experts who understand the plight of commodity customers and could provide expertise and funnel additional input to the Trustee on these and future issues.

5. The bulk of this amended objection identifies a potential solution for the cumbersome nature of the Trustee's proposed plan.

The Trustee's Plan Would Be Improved By Leveraging Technology

6. The Trustee's proposed plan is too cumbersome for commodities customers. The commodities market relies on high-speed, electronic, data transmission, including regular electronic communications from brokers to customers. For example, customers receive monthly statements from brokers, largely by e-mail, and have twenty-four hours to respond with any objections (*i.e.*, disputes concerning the proper "fill" price for a trade) or they are deemed to have accepted the statement.

7. MF Global utilized SunGard Stream GMI, financial software used in the acquisition, processing, management, dissemination, integration, and booking of all clearing and trade processing activities for virtually any listed derivatives instrument. The software is intended to eliminate manual processes and provide comprehensive, consistent, and accurate information in one integrated accounting system. MF Global's monthly statements for October 31, 2011, have been verified by customers, as well, making them accurate as of that date.

8. Yet, rather than rely on its highly automated back-office systems or the type of high-speed communication that is typical (and necessary) in the commodities industry, the Trustee has chosen an old-fashion, highly cumbersome, U.S. Postal-service driven, claims form and an old-school media publication notice format. (*See, e.g.*, Motion at ¶¶ 22 & 24.) The Bankruptcy Code provision and CFTC regulations concerning notice in commodity broker liquidation are far more flexible, however. For example, CFTC Regulation 190.02 simply requires “written notice” to customers. And, while the regulations identify categories of information that must be in a claim form, nothing in the regulations prohibit the Trustee from electronically generating a form that includes up-to-date customer information and simply requires that the sophisticated customers to verify its accuracy (as FCMs do on a monthly basis already).

9. After the FCMs to which positions were transferred between November 4 – 7, 2011, account for the manner in which bulk-margin amounts have been allocated to individual customers, The Trustee ought to be able to produce a simple account statement, using SunGard, showing commodity customers (with the exception of commodity customers who have traded foreign exchange on foreign exchanges) the current status of their accounts. Such statements would show both master and sub-accounts. Customers could, based on their own back-office system data, verify the accounts, provide additional detail required by Section 190.02, and return the statement as a modified claim form back to the Trustee by e-mail.

10. Upon receipt of these electronic claim forms, the Trustee should be in a position to transfer between 85 – 90 percent of all commodity customer account holdings to customers in a matter of days, rather than months. Assuming, based on recent news reports, a shortfall in segregated funds of approximately 10 – 12%, the shortfall in customer accounts can and should

come from the liquidation of other MFGI assets and a claim process designed to recover customer property. This would take substantially more time.

11. An *Ad Hoc* Committee could work directly with the Trustee to implement this streamlined process. It would make far more sense to take the time to design and implement such a process than to rush approval of an antiquated and cumbersome claim process that far more closely resembles a securities liquidation than a commodities liquidation.

12. This process would allow 85 – 90 percent of all commodity customer funds to be distributed by mid-December, 2011.

WHEREFORE, the Commodity Customer Coalition respectfully requests that the Court: (i) deny approval of the Trustee's Motion with respect to commodity customers; and (ii) order the Trustee to work with a committee – whether the *Ad Hoc* Committee or otherwise – of industry experts to streamline the claims process using all of the tools at hand, including MF Global's own SunGard software, which could be approved by the Court by November 28, 2011.

Dated: November 18, 2011

By: /s/ Kathleen L. Matsoukas/
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