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Ex-MF Global Clients Say JPMorgan Wants Unfair Leg Up

By **Hilary Russ**

Law360, New York (November 14, 2011, 9:47 PM ET) -- Former clients of MF Global Holdings Ltd. urged a New York bankruptcy judge Monday not to put JPMorgan Chase Bank NA, the company's biggest lender, ahead of them in line to recover cash from the estate of the bankrupt broker-dealer.

"People are mad, and with good reason," said James L. Koutoulas, a Chicago lawyer and commodity trading adviser who manages the Typhon Capital Management hedge fund and filed an objection on behalf of the Commodity Customer Coalition, a newly formed group seeking to represent MF Global's former customers.

He asked that the court reject a move by lender JPMorgan to gain some protection in the bankruptcy proceeding with an order that would prioritize its claims above others.

Customers and some institutions have already sounded the alarm over how the court is handling some \$633 million in allegedly missing customer funds that may have been commingled with MF Global's own money, which would be illegal. In commodities trading in particular, customer funds are supposed to be kept in segregated accounts, and the customers say they should already have their money back.

The dispute is one of several issues to come to the fore after MF Global quickly unraveled following its disclosure that it had a \$6.3 billion exposure to troubled European sovereign debt.

The company filed for bankruptcy Oct. 31. It had also suffered a \$192 million quarterly loss, a series of downgrades by credit rating agencies and a deflated attempt to sell itself off to a potential buyer that became wary after learning of the supposedly missing customer funds.

Regulators, the FBI and a liquidation trustee are all investigating the allegedly missing funds.

In the aftermath, the objection says, potentially thousands of commodities traders — including those trading on behalf of farmers who use futures trades as a hedge against potential losses in crop prices — are being forced to liquidate their positions and losing out on chances to make trades because the cash they need is tied up in MF Global accounts.

"These parties' inability to trade, combined with the commodity market's loss of confidence resulting from this collapse, will certainly have a chilling effect on the economy," the customers said.

Former MF Global customers are frustrated by their inability to access cash that may be sitting in their accounts. They say that with at least \$1.2 billion in assets still in the broker-dealer's estate, the court should immediately release \$633 million to them, let them form an

ad hoc committee, or stipulate that any priority lien given to a creditor or other party not supersede the customers' rights.

They also say professionals shouldn't be allowed to get paid with customer money before the customers themselves are paid.

Liquidation trustee James W. Giddens said Monday that while he had been able to transfer some \$1.5 billion in collateral in thousands of customers' positions out of MF Global to other derivative clearing organizations, some others couldn't be transferred.

Despite their best efforts, Giddens said in a statement, "it appears that a transfer of these positions to a transferee [futures commission merchant] for the benefit of customers cannot be accomplished."

The trustee also filed motions Monday to reject leases for MF Global's main office on Park Avenue in New York, as well as offices space in Washington, Boston, San Francisco, Dallas and Coral Gables, Fla. MF Global paid nearly \$775,000 in rent every month for those spaces altogether.

Yet other issues are rising to the fore as the bankruptcy and liquidation cases proceed. Also Monday, hedge fund Elliott Management Corp. — which is on the official committee of unsecured creditors — asked for permission to begin trading MF Global claims.

"Elliott should not be forced to choose between serving on the committee and risking the loss of beneficial investment opportunities," it said. Any trading in bankruptcy claims would be subject to certain "screening wall" provisions that would isolate its trading activities from its activities on the creditors committee, the motion said.

The Customer Coalition is represented pro bono by James L. Koutoulas.

Elliott is represented by Kleinberg Kaplan Wolff & Cohen PC.

Giddens is a partner with Hughes Hubbard & Reed LLP. The team working on the case under also includes James B. Kobak Jr. and Christopher K. Kiplok.

MF Global is represented by Kenneth S. Ziman, J. Gregory Milmo, J. Eric Ivester and George Panagakis of Skadden Arps Slate Meagher & Flom LLP.

The bankruptcy case is In re: MF Global Holdings Ltd. et al., case number 1:11-bk-15059, in the U.S. Bankruptcy Court for the Southern District of New York.

The liquidation case is In re: MF Global Inc., case number 1:11-ap-02790, in the U.S. Bankruptcy Court for the Southern District of New York.

--Editing by Elizabeth Bowen.

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