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MF Global Trustee Seeks \$2B More In Customer Payouts

By **Hilary Russ**

Law360, New York (November 29, 2011, 8:47 PM ET) -- The trustee overseeing the liquidation of MF Global Inc. sought permission from a New York bankruptcy court Tuesday to disburse up to an additional \$2.1 billion in assets to former commodity customers of the failed brokerage who were left out of previous transfers.

Lawyers for liquidating trustee James W. Giddens filed an expedited motion to distribute the money in what would be a third bulk transfer of assets and would bring up the total amount of assets handed back to customers to \$4.1 billion.

The third bulk transfer would also restore about 66 percent of the assets in all commodity customers' accounts, according to a statement from Giddens. Since the start of the case, he has said customers would initially get only 60 percent back in the first round of transfers, though his hope is that he will be able to recover enough money to give customers back all of their money.

If U.S. Bankruptcy Judge Martin Glenn grants the motion, it would "further the trustee's goal to return as much customer property as possible, as quickly as possible, in a manner that is fair to all customers and that is consistent with the law," his office said. A hearing on the motion is set for Dec. 9.

Getting money back to customers — and exactly how much they should get — has been a key early issue in the case because about \$1.2 billion in customer money is allegedly missing from what were supposed to have been segregated accounts.

But the trustee, the FBI, the U.S. Commodity Futures Trading Commission and other agencies are investigating whether MF Global commingled customer funds with its own money.

The supposed shortfall reportedly prompted one potential buyer, who was interested in acquiring MF Global, to walk away from the deal. That, along with downgrades following the disclosure of \$6.3 billion in exposure to troubled European debt, caused parent company MF Global Holdings Ltd. to spiral into bankruptcy on Oct. 31.

Estimates of the missing funds could change as probes move forward.

On Monday, for example, investigators reportedly located about \$200 million of the missing money at a JPMorgan Chase & Co. unit in the U.K.

Customers have flooded the court with letters detailing the hardships they've suffered without access to their frozen funds. Judge Glenn is likely to approve the latest motion for dispersal of funds — a motion that Giddens' attorneys has already said they would file.

The judge also granted two previous motions for bulk transfers after sounding a note of alarm about customers' struggles, including one farmer who said he could not pay his mortgage without the funds that had been in his MF Global account.

John L. Roe, who co-founded the ad hoc group Commodity Customer Coalition, which says it represents at least 8,000 customers, said that the trustee's motion was a direct result of advocacy by the CCC and other MF Global customers to "keep their plight in the national conversation."

"We will continue to fight to affirm the primacy of customer segregated funds and we will not rest until 100 percent of commodity customer funds have been returned," he said.

The third bulk transfer is expected to be the most complicated of all, according to Giddens.

In part, that's because it will rely heavily on CME Group Inc. and other operators of derivative clearing organizations to reconcile data and help implement distributions, Giddens' office said.

CME, which operates the Chicago Mercantile Exchange, has offered a \$550 million guarantee on the transfers in case some customers end up getting more than their share of any final distribution in the case.

The transfers would likely begin "immediately and on a rolling basis" once the motion is approved. It could take the DCOs two to four weeks to complete the transfers, though Giddens said he couldn't be sure "because of the level of coordination that will be necessary."

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

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 same court.

--Additional reporting by Ian Thoms. Editing by John Quinn.

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