

MF Global: US Update as of November 9, 2011 - SIPC Trustee Announces Transfer of Additional Commodity Accounts

Author: Elizabeth A. McGovern, Associate, Philadelphia & London

Publication Date: November 09, 2011

On November 7, 2011, the SIPC Trustee (the "**Trustee**") announced that MF Global Inc. ("**MFGI**") commodity customer accounts that had not yet been transferred by the Trustee can now be transferred provided that the account holder finds a Futures Commission Merchant (an "**FCM**") willing to accept a transfer of the positions in the account without collateral. All account transfers must be completed by **5:00 p.m. EST Friday, November 11, 2011**, at which time the process of an orderly liquidation of non-transferred accounts will begin. In order to protect their transferred positions, the Trustee advised MFGI customers to consider posting collateral if requested by the transferee FCM. Alternatively, MFGI customers can request that their accounts be liquidated.

The Trustee noted that he can only do bulk transfers of commodity accounts. However, if an individual's account has not been transferred as part of the bulk transfer, that account can be transferred if the individual finds an FCM and transfers the account without collateral.

The Trustee further confirmed that approximately 400 active security accounts have been identified and the Trustee is currently attempting to find brokers where those accounts can be bulk transferred back to customers. To the extent that accounts are not transferred, the Trustee will be establishing a claims process, which will be subject to bankruptcy court approval, for the customers and creditors of MFGI.

Finally, the Trustee confirmed November 7 that, although he is still in the early stages of his investigation, there is an "apparent shortfall" at MFGI. It is currently unclear how long the Trustee's investigation will take, the precise amount of the shortfall, and when additional assets will be returned to customers.

MFGI Customers Can Request Return of Specifically Identifiable Property

On November 8, 2011, the Trustee announced that commodity customers who deposited certain kinds of non-cash property, referred to as "Specifically Identifiable Property", with MFGI may instruct the Trustee to return their property. Instructions and proof evidencing a customer's claim must be received by the Trustee by November 15, 2011. Any Specifically Identifiable Property for which the Trustee does not receive instructions or which cannot be returned to the customer by November 23, 2011 will be liquidated, and customers with an interest in such property will have a claim against MFGI. The Trustee will announce the details of the claims process at a later time.

The Trustee noted that no customer may receive more than its proportionate share of the property that is available to satisfy customer claims. As such, any customer that instructs the Trustee to return its property will be required to pay the estate an amount determined by the Trustee. The amount an instructing customer must pay to the estate if the property at issue is not margining an open contract will approximately be the difference between the market value of the customer's property and the customer's pro rata share of the estate, as estimated by the Trustee. If the customer's property is margining an open contract, the instructing customer will be required to pay the estate the full fair market value of the property on the date of its return.

Specifically Identifiable Property is referred to in Part 190 of the Regulations of the Commodity Futures Trading Commission, and includes:

- Any security deposited as margin which was securing an open commodity contract as of October 31, 2011 and is (i) registered in the customer's name; (ii) not transferable by delivery; and (iii) not a short-term obligation.
- Any fully paid, non-exempt security held for a customer's account in which there were no open contracts as of October 31, 2011. Instead of having the specific securities deposited with MFGI returned, customers may also request that the Trustee purchase like-kind securities of a fair market value that does not exceed the customer's proportionate share of the estate.
- Any warehouse, bill of lading or other document of title deposited as margin which, as of October 31, 2011, was securing an open commodity contract and can be identified in MFGI's records as being held for such customer's account, and is neither in bearer form nor otherwise transferable by delivery.
- Any warehouse receipt, bill of lading or other document of title, or any commodity received, acquired or held by MFGI to make or take delivery or exercise from or for a customer's account, and which can be identified in MFGI's records as received from or for such customer's account as held specifically for the purpose of delivery or exercise.
- In certain instances, any cash or other property deposited solely for the specifically noted purpose of taking or making physical delivery on an options or futures contract. The Trustee should be contacted directly if a customer has deposited such property with MFGI and wishes for it to be returned.

Instructions for the return of Specifically Identifiable Property should be directed to: James W. Giddens, Trustee for the SIPA Liquidation of MF Global Inc., c/o EPIQ Bankruptcy Solutions, LLC, FDR Station, P.O. Box 5082, New York, New York 10150-5082. Email: MFGIProperty@hugheshubbard.com.

The OCC Reports That Customer's Listed Equity Options Contracts Have Been Liquidated

On November 8, the Options Clearing Corporation, the world's largest equity derivatives clearing organization (the "**OCC**"), confirmed that it has been liquidating listed stock options held by MFGI customers since November 1. The OCC states that its liquidation is substantially complete, with only a few small positions awaiting transfer or liquidation. Although the OCC stated that it has received Trustee approval where applicable, the Trustee has not, to our knowledge, confirmed that the listed equity options have been liquidated, provided customers with information regarding these options or the status of the margin posted to MFGI in support of the options.

Unsecured Creditor's Committee is Formed

On November 7, 2011, the US Trustee's Office appointed a five-member unsecured creditor's committee in the MF Global bankruptcy case. The Committee is comprised of Wilmington Trust Company, JPMorgan Chase Bank, N.A., Bank of America, N.A., Elliott Management Corporation and Caplin Systems Ltd. (collectively, the "**Creditors' Committee**").

We have a dedicated team, with experience in insolvency, financing, financial markets and commodities trading, advising clients with assets, positions and other dealings with MF Global. If you have dealings with or exposures to MF Global and would like help with this evolving situation, please contact Kyri Evagora, Georgia Quenby, Brett Hillis, Andrew Cross or Andrea Pincus.

About Reed Smith

Reed Smith is a global relationship law firm with more than 1,600 lawyers in 23 offices throughout the United States, Europe, Asia and the Middle East.

The information contained herein is intended to be a general guide only and not to be comprehensive, nor to provide legal advice. You should not rely on the information contained herein as if it were legal or other professional advice.

The business carried on from offices in the United States and Germany is carried on by Reed Smith LLP of Delaware, USA; from the other offices is carried on by Reed Smith LLP of England; but in Hong Kong, the business is carried on by Reed Smith Richards Butler. A list of all Partners and employed attorneys as well as their court admissions can be inspected at the website <http://www.reedsmith.com/>.

© Reed Smith LLP 2011. All rights reserved.