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Trustee for the SIPA Liquidation of MF Global Inc.

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

In re

MF GLOBAL INC.,

Debtor.

Case No. 11-2790 (MG) SIPA

**MOTION OF JAMES W. GIDDENS, TRUSTEE FOR THE LIQUIDATION OF MF
GLOBAL INC., FOR AN ORDER GRANTING AN EXPEDITED HEARING**

James W. Giddens (the “Trustee”), as Trustee for the liquidation of the business of MF Global Inc. (“MFGI”) under the Securities Investor Protection Act of 1970, as amended (“SIPA”), 15 U.S.C. § 78aaa *et seq.*, by and through his undersigned counsel, respectfully moves, pursuant to Section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for an expedited hearing on the emergency motion (the “Emergency Motion”), pursuant to SIPA section 78fff-1(b), sections 105(a), 764, and 766(c) of the Bankruptcy Code, and 17 C.F.R. §§ 190.01 through 190.10 (the “Part 190 Regulations”), for entry of an order approving the acquisition of certain segregated customer commodity positions (the “Account Transfers”), and

extending the Trustee's authorization under the MFGI Liquidation Order (as that term is defined herein) for a one-day extension to operate the business of MFGI in the ordinary course until 6:00 p.m. on November 4, 2011. In support of the Expedited Hearing Motion, the Trustee respectfully states as follows:

PRELIMINARY STATEMENT AND BACKGROUND

1. On or about October 30, 2011, MFGI, a registered futures commission merchant, reported to regulators that a material shortfall appeared to exist in the amount of customer funds required to be segregated under the Commodity Exchange Act ("CEA") and the U.S. Commodity Futures Trading Commission ("CFTC") regulations promulgated thereunder. Thereafter, MFGI's clearing privileges at major commodities clearing organizations, including the Chicago Mercantile Exchange ("CME"), were suspended, and MFGI was put on "liquidation only" trading status.

2. As a result of the apparent segregation violations and the suspension of clearing privileges, more than 150,000 customer accounts essentially were frozen on October 31, 2011, of which more than 50,000 accounts were regulated commodities customer accounts. The CME estimates that MFGI's current segregated funds requirement is approximately \$5.45 billion. Moreover, the total amount of MFGI customer segregated funds on deposit at the CME is approximately \$2.5 billion, and the clearing-level segregated collateral is approximately \$1.5 billion or approximately 60 percent of the MFGI customer segregated funds on deposit at the CME.

3. Subsequently on October 31, 2011, SIPC filed an application for the entry of a protective decree placing MFGI in liquidation under SIPA, after determining, based on information provided by the U.S. Securities and Exchange Commission ("SEC"), that MFGI was unable to make such computations as may be necessary to establish compliance with the

requirements regarding financial responsibility under section 15(c)(3), and recordkeeping under section 17(a), of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78o(c)(3) and 78q(a) (2000), and SEC Rules 15c3-3 and 17a-3, 17 C.F.R. §§ 240.15c3-3 and 240.17a-3, and that consequently, MFGI was in danger of failing to meet its obligations to customers and that two of the conditions referred to in SIPA section 78eee(a)(3) and specified in SIPA section 78eee(b)(1)(D) existed. (Mem. of Law in Support of the Complaint and Application of SIPC, at 5-6, ECF No. 3.)

4. Subsequently on October 31, 2011, the Honorable Paul A. Engelmayer, United States District Court for the Southern District of New York, entered an Order (the “MFGI Liquidation Order,” ECF No. 1) commencing liquidation of MFGI pursuant to the provisions of SIPA in the case captioned *Securities Investor Protection Corp. v. MF Global Inc.*, Case No. 11-CIV-7750 (PAE).

5. The MFGI Liquidation Order *inter alia*: (i) appointed James W. Giddens as Trustee for the liquidation of the business of MFGI pursuant to § 78eee(b)(3) of SIPA; (ii) appointed Hughes Hubbard & Reed LLP counsel to the Trustee pursuant to § 78eee(b)(3) of SIPA; and (iii) removed the case to this Court as required for SIPA cases by § 78eee(b)(4) of SIPA (the “SIPA Proceeding”). (MFGI Liquidation Order ¶¶ II, IX.) The MFGI Liquidation Order specifically includes a provision authorizing the Trustee to “take other action as necessary and appropriate for the orderly transfer of customer accounts and related property,” (*Id.* ¶ X), which provision the Securities Investor Protection Corporation (“SIPC”) specifically included in its application for MFGI’s liquidation for this purpose.

6. Promptly after appointment by the District Court, the Trustee became involved in the process to find potential transferees for MFGI's commodity clients. A substantial portion of MFGI's commodity clients cleared their transactions through the CME.¹

7. Transactions in commodity futures and options on such futures are cleared on DCOs, which provide credit support for such transactions through means including collecting performance bond for outstanding transactions, paying and collecting variation (gains and losses) daily, and often twice daily, and requiring that each such transaction be guaranteed by highly creditworthy FCMs that are members in good standing of such DCOs.²

8. CME's familiarity with MFGI's business lines and earlier, unsuccessful efforts by the company to find buyers to avert this liquidation suggested that the transfer of accounts would have to be to more than one firm as none of the 125 existing FCMs would be willing and able to handle the variety of accounts carried by MFGI. Accordingly, three types of accounts were identified ("exchange members," "retail," and "institutional"), and the Trustee, company personnel and the CME, began locating FCMs that they believed would be willing and able to accept the entirety of any of these client segments.

9. As part of the process, information was provided to the potential transferees. This information was limited to position and client specifics (as opposed to reports on segment profitability). The intention was for the potential transferees to be able to assess whether they could support the client positions they would be assuming. The Trustee and the

1. The "CME Exchanges" are: the Chicago Mercantile Exchange, Inc.; the Commodity Exchange Inc. ("COMEX"); the New York Mercantile Exchange ("NYMEX"); and the Chicago Board of Trade ("CBOT").

2. *See generally* Commodity Exchange Act §§ 4d, 5b, 7 U.S.C. §§ 6d, 7a-1.

CME contacted MFGI employees who prepared overnight, month-end reports that were reconciled and completed on Tuesday morning November 1, 2011.

10. The identified potential transferees were invited to review the month-end reports at MFGI's offices. Over the course of the day, the Trustee and CME coordinated this review, with Trustee representatives present at MFGI's Chicago offices. For the smaller number of positions cleared at entities other than CME, the Trustee provided access to the same set of data to potential transferees upon request. As of the end of the day on November 1, 2011, no potential transferees had agreed to participate in this relatively small population of customer commodity positions. The Trustee has endeavored and will continue to endeavor to work with the interested parties to find transferees for all commodity customer positions, but some such positions may remain untransferred, and may have to be liquidated.

11. The Trustee has determined that the Account Transfers will contribute to the prompt satisfaction of customer claims and the orderly liquidation of MFGI. Without effecting these transfers, the positions are required to be liquidated promptly and in an orderly manner. As set forth more fully below, the customers' positions are required by Part 190 Regulations to be liquidated if they are not transferred to a transferee FCM before the close of business on Friday, November 4, 2011 (the fourth business day after the entry of the MFGI Liquidation Order). The liquidation of these customer commodity positions in all likelihood will negatively effect the net value to the customers and the markets in general.

12. SIPC approves the Account Transfers as described in the Emergency Motion.

13. As required by 17 C.F.R. § 190.06(g)(2)(i)(B), subject to requisite notice to the CFTC, transfers specified in such section are approved by the CFTC unless specifically

disapproved. The CFTC, having received the requisite notice, does not disapprove of the Account Transfers as described in the Emergency Motion.

14. The CME has agreed to cooperate in the transfers, including providing accountings and other assistance already and continuing to do on a no-charge reasonable basis going forward.

ARGUMENT

Cause Exists to Hear and Decide the Emergency Motion on an Expedited Basis.

15. Local Rule 9006-1(b) provides that unless the court orders otherwise, a motion must be served at least fourteen (14) days prior to the return date. Federal Rule of Bankruptcy Procedure 9006(c) expressly provides that a bankruptcy court “for cause shown may in its discretion with or without motion or notice” reduce the time period for notice in all but several bankruptcy matters, none of which are applicable to the present case. In the exercise of its discretion under Bankruptcy Rule 9006(c), a court must consider, primarily, the prejudice that potentially would result to parties entitled to notice if a reduction is effected, and weigh this against the reasons for shortening this period. *In re Kings Falls Power Corp.*, 185 B.R. 431, 441 (Bankr. N.D.N.Y. 1995) (allowing shortened notice period because resolution of dispositive motion was necessary prior to “blow-up” date of global settlement and was in the estate’s best interests); *In re Chateaugay Corporation*, 111 B.R. 399, 407-8 (Bankr. S.D.N.Y. 1990) (shortening notice because ten days could impose “severe hardship” on parties in interest and six days would not prejudice defendant). Furthermore, section 102 of the Bankruptcy Code specifically indicates that “after notice and a hearing” means “after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances” 11 U.S.C. § 102(1)(A).

16. In the present case, speed is of the utmost importance. The immediate effectuation of the Account Transfers is imperative because DCOs must manage their risks, which may require liquidation of positions which are not supported by a clearing member, and for which arrangements to pay promptly (i.e., once or twice a day) have been effectively suspended for three days as of the date of the Emergency Motion. DCOs have, in order to facilitate protection of customers and avoid disrupting markets, extended forbearance, but such forbearance may end at any time the DCOs determine that protection of their membership as a whole and their proper functioning requires positions to be liquidated. Moreover, there is a limited time period for transfers under the Part 190 Regulations and the Bankruptcy Code commodity broker liquidation provisions, which are applicable in this SIPA proceeding.

17. Accordingly, absent immediate approval of the Account Transfers, customers and others will likely suffer increased harm and damage. The need for swift judicial action clearly outweighs any potential prejudice caused by short notice. Hesitation and delay are not an option.

CONCLUSION

WHEREFORE, the Trustee respectfully requests that this Court enter an Order, in the form attached hereto, setting a hearing on the Trustee's Emergency Motion on an expedited basis and granting the Trustee such other and further relief as is just and proper.

Dated: New York, New York
November 2, 2011

HUGHES HUBBARD & REED LLP

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[PROPOSED] ORDER GRANTING MOTION FOR AN EXPEDITED HEARING

Upon the motion (the “Motion”)¹ of James W. Giddens (the “Trustee”), as Trustee for the liquidation of the business of MF Global Inc. (“MFGI”) under the Securities Investor Protection Act of 1970, as amended (“SIPA”), 15 U.S.C. § 78aaa *et seq.*, for an expedited hearing regarding the Emergency Motion; and the Court having reviewed the Motion and the relief requested therein and determined it is in the best interests of MFGI’s estate, customers and creditors; and that good cause exists for setting an expedited hearing regarding the Emergency Motion; and after due deliberation and good and sufficient cause appearing therefor, it is hereby:

ORDERED that the Motion is granted in all respects; and it is further

ORDERED that a hearing shall take place on November __, 2011 at __: __ .m. regarding the relief sought in the Emergency Motion; and it is further

ORDERED, that the Court shall retain jurisdiction to hear and determine all matter arising from or related to the implementation of this Order.

1. Unless defined herein, defined terms shall have the meaning ascribed to them in the Motion.

Dated: November __, 2011

Hon. Martin Glenn
United States Bankruptcy Judge