UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
MF GLOBAL HOLDINGS, LTD., at al.,	)	Case No. 11-15059 (MG)
Debtors.	)	(Jointly Administered)

RESPONSE OF MFGI COMMODITY CUSTOMER CLAIMANTS TO NINTH OMNIBUS OBJECTION

Robert Tierney, *et al*. (the "Customer Class Claimants"),[1] individually and on behalf of all former commodity customers who held money, property and/or securities at MF Global Inc. ("MFGI" or the "Company") that remains unreturned to them following the Company's October 31, 2011 collapse (the "MFGI Commodity Customers"), respectfully submit this response to the Ninth Omnibus Objection of Plan Proponents Seeking to Disallow Certain Duplicate MFGI Customer Claims (ECF No. 1159) (the "Ninth Objection") as it relates to Proof of Claim No. 148 (the "Customer Class Claim")[2] and certain individual claims filed by the Customer Class Claimants, listed in Exhibit A to the Ninth Objection.

PRELIMINARY STATEMENT

The current shortfall in commodity customer property available to repay MFGI Commodity Customers for the net equity in their accounts as of the October 31, 2011 collapse of MFGI and Holdings is currently estimated to be in excess of $300 million (the "Shortfall"). The estimate is a best-case scenario that assumes (i) approval of a pending settlement among James W. Giddens, trustee for the liquidation of MFGI pursuant to the Securities Investor Protection Act of 1970 ("SIPA"), 15 U.S.C. §§ 78aaa et seq. (the "SIPA Trustee"), JPMorgan Chase Bank, N.A. ("JPM") and the plaintiffs in the class action on behalf of customers consolidated *In re MF Global Ltd. Investment Litigation*, 12-MD-2338 (VM) (S.D.N.Y.) (the "Customer Class Action") (the "JPM Settlement"); and (ii) the settlement with MF Global UK Limited ("MFGUK") made

[1] The Customer Class Claimants are Robert Tierney, James Groth, Brian Fisher, Shane McMahon, Michael Mette, Timothy Zaug, Paradigm Global Fund I Ltd., Paradigm Equities Ltd., Paradigm Asia Fund Ltd., Augustus International Master Fund, L.P., Zybr Holdings, LLC, William Schur, Futures Capital Management, LLC, Ali A. Rangchi Bozorki, MTrust FBO James Mayer, MTrust Co. FBO James Mayer, John Andrew Szokolay, Donald Tran, Thomas G. Moran, Kay P. Tee, LLC, William Fleckenstein and Bearing Fund LP.

[2] The Customer Class Claim – originally filed on March 20, 2012 by Henning-Carey Proprietary Trading, LLC, *et al.*, for $1.6 billion – was amended by the Customer Class Claimants on August 22, 2012 for an "Undetermined" amount. The amended Customer Class Claim is No. 1646 in the MF Global Holdings Ltd. ("Holdings") Claims Register.

effective by the JPM Settlement (the "MFGUK Settlement").

The MFGI Commodity Customers are entitled to recover the entirety of their losses caused by the defalcation of customer property by MFGI and Holdings, including not only the net equity in their accounts but also prejudgment interest and other damages to compensate them for the ongoing deprivation of their property. The SIPA Trustee has repeatedly stated that his recovery of customer property for *pro rata* distribution to MFGI Commodity Customers will be insufficient to satisfy all net equity claims (putting aside other damages) without additional recovery in the Customer Class Action. In this regard, the MFGI Commodity Customers indisputably have valid causes of action against Holdings and certain of its executives for their role in aiding and abetting MFGI's violations of the Commodity Exchange Act and Commodity Futures Trading Commission regulations, and for aiding and abetting MFGI's breach of fiduciary duty and conversion of its customers' property.

In response to the significant claims of the MFGI Commodity Customers, the Plan Proponents fail to meet even their initial burden to show that the Customer Class Claim and individual claims lack a sound legal basis. The Ninth Objection argues instead that only the SIPA Trustee can seek to recover against Holdings on behalf of the MFGI Commodity Customers and only in the amount of their the net equity in their customer accounts, and as a result the customers can have no claim against Holdings' estate for any shortfall in the amount the SIPA Trustee obtains. Therefore, according to Plan Proponents' theory, recovery against both Holdings and MFGI would be duplicative and unnecessary.

The Plan Proponents are wrong on at least three counts. Procedurally, it is premature for the Plan Proponents to apply the "one satisfaction rule," a rule normally used to reduce the amount of a final *judgment* to reflect payments from settling defendants. Substantively, the

amount the Trustee eventually recovers and distributes *pro rata* to satisfy the net equity losses in the MFGI Commodity Customers' accounts is *not* the full measure of the losses these claimants incurred even in the event the SIPA Trustee was able to cure the Shortfall. Rather, those losses include the substantial prejudgment interest that has already accrued, and continues to accrue, due to the MFGI Commodity Customers' inability to access the full amount of their funds, as well as other potential damages. The Plan Proponents simply ignore well-settled authority that a plaintiff is not made whole without an award of prejudgment interest. Under New York law, MFGI Commodity Customers are entitled to 9% interest on the funds missing from their accounts. N.Y.C.P.L.R. §§ 5001(a), 5004. Finally, the Plan Proponents cite no authority to support their arguments that only the SIPA Trustee can seek recovery for the customers and that the recovery is limited to net equity claims. For these reasons, Plan Proponents fail to carry their burden that allowing the claims of the MFGI Commodity Customers would lead to duplicative recovery, and the Ninth Objection should be overruled as to the Customer Class Claim and individual claims.

FACTS

As detailed in the Report of the Trustee's Investigation and Recommendations into the bankruptcy of MF Global Inc. ("Trustee Report") (ECF dkt. 11-02790-mg No. 1865), the Report of Investigation of Louis J. Freeh, Chapter 11 Trustee of MF Global Holdings Ltd., et al. ("Chapter 11 Trustee Report") (ECF dkt. 11-15059-mg No. 1865), and the April 22, 2013 Complaint filed by Mr. Freeh (ECF dkt. 11-15059-mg No. 1350), Jon Corzine's tenure as Chairman and CEO of Holdings coincided with MF Global's disastrous transformation from a futures commission merchant ("FCM") to a broker-dealer ("BD"). Corzine and other executives of Holdings were directly responsible for Holdings' raid on MFGI's customer segregated funds,

leading to a $1.6 billion shortfall in these funds for which the MFGI Commodity Customers now seek recovery.

MFGI was an FCM registered with the Commodity Futures Trading Commission ("CFTC") and subject to the requirements of the CEA and the rules and regulations promulgated thereunder. As of October 31, 2011, MFGI had approximately 38,000 commodity customer accounts containing customer funds and assets with a value totaling approximately $5.45 billion. In accordance with the requirements of the CEA, all of these customer funds and assets should have been segregated and separately maintained in an account for the exclusive benefit of MFGI's commodity customers.

A. Holdings Embarks On A European Debt Trading Strategy That Imposed Numerous Obligations On MFGI

Corzine, who became Chairman and CEO of Holdings in March 2010, developed a strategy to expand proprietary trading across all product lines, causing MF Global "to operate more aggressively." (Chapter 11 Trustee Report at 18.) Corzine personally led a strategy review that resulted in a plan to evolve MF Global from and FCM to a BD "en route to becoming an investment bank." (*Id.* at 20.) Corzine became directly involved in trading through his selection of MF Global's traders and his own, personal – and unsupervised – trading portfolio for MF Global. (*Id.* at 21, 23.)

One immediate outcome of Corzine's interactions with MF Global traders was his advocacy for significantly expanded trading in European sovereign debt. Although MF Global had engaged in sovereign debt trading in the past, the new trade strategy involved significantly larger trades that, critically, were repurchase to maturity ("RTM") rather than short-term trades. (Chapter 11 Trustee Report at 22-23.) Sovereign debt trades went from a mere footnote at MF Global to become the Company's central trading strategy – a very highly leveraged and

speculative strategy. MF Global relied heavily on the Euro RTM strategy to report improved earnings, but the posting of initial margins for each new position decreased available liquidity for MF Global. (*Id.* at 30-31.)

Between September 2010 and June 2011, the MF Global Board approved a series of requests initiated by Corzine to increase the risk limits for investing in European sovereign debt. The Board gave these approvals only after Holdings' CFO Henri Steenkamp and other executives provided assurances that MFGI had sufficient liquidity, even under various stress scenarios, to satisfy any current or projected margin demands. (Chapter 11 Trustee Report at 5.)

Corzine not only advocated for MF Global's Euro RTM strategy, he personally directed and executed a number of Euro RTM transactions and acknowledged these trades were his "personal responsibility" and a "prime focus" of his attention. (Chapter 11 Trustee Report at 32.) Despite Holdings' Board's concerns about the "accounting-driven structure of the Euro RTMs" (*id.* at 51), in a mere 15 months, Corzine and other senior executives of Holdings successfully advocated for the Company to increase the risk limits for trading in European sovereign debt, from about $400 million in March 2010, to over $8.5 billion by June 2011. (*Id.* at 32-48.) Further trading was finally halted in mid-August 2011. (*Id.* at 51.)

B. Holdings Disregards Liquidity, Risk, And Financial Control Systems Red Flags

At the same time Corzine and Holdings executives embarked on the doomed Euro RTM trading strategy, they disregarded numerous red flags about the most basic information concerning the Company's liquidity, risk and financial control systems, and tracking of financial information. (Chapter 11 Trustee Report at 74.) As a result of these serious deficiencies, "MF Global was capital rich but liquidity poor." (*Id.* at 75.) Further, and importantly for purposes of the MFGI Commodity Customers' claim, these deficiencies allowed Holdings to repeatedly

misrepresent the safety of customers' segregated funds.

MF Global's Finance Department "was responsible for ensuring that MFGI complied with all of the regulatory requirements associated with its operation of both a B/D and an FCM." (Chapter 11 Trustee Report at 86.) The requirement of obtaining the unilateral consent of MFGI's Assistant Treasurer was the only "control" in place to distinguish customer property from MFGI's proprietary funds. But the Financial Regulatory Group within the Finance Department "relied primarily on spreadsheets and manual calculations" in preparing important regulatory reports, including "the Segregation Statement and Secured Statement" and "weekly and end-of-month reports regarding compliance with SEC segregation requirements." (*Id.* at 86 & n.22.) Although Company management was aware of these and other systemic deficiencies by May 2011, the deficiencies went uncorrected, "compounding a shortfall in FCM customer funds that could not be identified soon enough to save the Company" – and the funds belonging to the MFGI Commodity Customers. (*Id.* at 88.)

In the summer of 2011, the FSA, which regulated the UK subsidiary MF Global U.K. Limited, raised concerns about the Company's liquidity. In response, Holdings' COO Bradley Abelow and CFO Steenkamp provided the FSA with figures showing available cash of $410 million for MF Global and $165 million for MFGI. (Chapter 11 Trustee Report at 94.) Within a month, Holdings executives knew these cash figures had dropped precipitously, by $172 million and $140 million, respectively. Nonetheless, the executives ordered Company employees to inflate the amount of cash by including $325 million from FCM funds – of which $300 million came from segregated customer funds – in updated figures provided to the FSA. (*Id.* at 95.)

C. Holdings Acknowledges Using MFGI's "FCM Excess," Including Customer Segregated Funds, To Keep MF Global Afloat

As Steenkamp acknowledged in an October 2011 email to Corzine, Abelow and others,

for some time MF Global's "broker-dealer … is currently unable to fund itself, and more worrying continues to need more cash than we have in [F]in[C]o, thereby having us dip into FCM excess every day." (Chapter 11 Trustee Report at 96 (emphasis added).) For more than a year, MFGI's commodity business had been regularly providing $50 to $100 million in cash to the broker-dealer business through intraday transfers. (*Id.* at 111.) And for months, Corzine and Steenkamp had led MF Global's effort to draw on "the FCM's Regulatory Excess funds … to fund the B/D business on a regular basis." (*Id.* at 114.) This request differed from MF Global's past use of FCM funds not only because it expressly relied on funds in customer segregated accounts, but also because the timing was suspicious: by the summer of 2011, "FCM's excess funds had eroded from approximately $150 million to $75 million." (*Id.*)

MFGI's CFO (North America) Christine Serwinski opposed using the so-called "regulatory excess." After one late-night request to facilitate the transfer of $100 million, when the excess segregated funds were at best only $127 million, Serwinski responded: "What if I say no? What if they needed 150mm and I only gave them 100mm?" (Chapter 11 Trustee Report at 112.) Serwinski later expressed these concerns: "(1) FCM client assets would be put at risk even if only overnight, (2) the FCM client asset base 'should not be a [B/D] working capital source strategy to be relied upon,' and (3) '[i]n the event of a financial crisis, [was MF Global] guaranteed that [it] could draw down on the [unsecured] RCF to meet the [Company's] liquidity needs and return the FCM client assets to meet any requirements in the seg/secured environment?'" (*Id.* at 115.) After consulting two outside law firms, Serwinski argued against loaning "$250 million in excess funds to the B/D on an overnight basis." (*Id.* at 115-16.)

D. Holdings Directs The Use Of MFGI's Customer Segregated Funds

None of Holdings' senior management's discussion about the MFGI broker-dealer business' difficulty funding itself, or using FCM funds, was reported to the board of directors in

the summer of 2011. (Chapter 11 Trustee Report at 116-17.) Months later, on October 27, 2011, after a series of credit rating downgrades led to increased liquidity pressure on MFGI, Serwinski expressed concern about reports indicating that MFGI's customer accounts were under-segregated. (*Id.* at 66.) The next day, Corzine personally instructed MF Global's Chicago office to clear up overdrafts with its clearing agent, JPMorgan Chase, the result of which was a $200 million transfer from an MFGI customer segregated account, of which $175 million was paid to Chase. (*Id.* at 68.) Compounding the crisis with customer funds, that day MF Global's Financial Regulatory Group ignored a $300 million deficiency in segregated accounts, instead believing $540 million in transactions had been booked incorrectly – not once, but twice. (*Id.* at 68-69.) By the time the Financial Regulatory Group discovered its error, and reported it to the Board, and ultimately to MF Global's regulators, the actual deficit in customer segregated funds was ***$952 million***. (*Id.* at 71.)

On October 31, 2011, as a result of MFGI's segregation violations, its clearing privileges at the major commodities and derivative clearing organizations, including those at the exchanges operated by the CME Group, were suspended and MFGI put into a "liquidation only" status. Also as a result of MFGI's apparent segregation violations and the suspension of its clearing privileges, approximately 38,000 active commodity customer accounts, including the MFGI Commodity Customer's accounts, were frozen on October 31, 2011, making it impossible for the Customers to access their accounts, or the funds or other assets in those accounts.

E. Recovery And Return Of MFGI Commodity Customer Funds

The SIPA Trustee has notified MFGI's customers that he expects to distribute funds for customers who traded on US exchanges and on foreign markets, from the funds and other property customers had on deposit with MFGI when the liquidation of MFGI was commenced on October 31, 2011, and from various other recoveries the SIPA Trustee has accomplished since

that date. Despite the distributions made and proposed to be made by the SIPA Trustee, the Shortfall remains hundreds of millions of dollars.

Further, it has been 18 months since the MFGI Commodity Customers were first denied access to their funds, and the Trustee provides no timetable for the final distributions of the net equity in their accounts to be made. Indeed, the bulk of the proceeds from the MFGUK Settlement may not be distributed to customers for 3 to 5 years. This delay underscores the ongoing harm suffered by MFGI Commodity Customers who are unable to access the entirety of their segregated funds. The MFGI Commodity Customers are entitled to an award of interest on their missing funds, in addition to the recovery of any final Shortfall.

F. MFGI Commodity Customers' Individual And Class Claims

As alleged in the Customer Class Claim, Holdings willfully aided and abetted MFGI's violations of the CEA and CFTC regulations and MFGI's breach of fiduciary duty by knowingly and intentionally failing to implement and enforce policies and procedures to insure that MFGI (a) treated its customer property as belonging exclusively to such customers; (b) segregated and separately accounted for MFGI's commodity customers' property; (c) did not commingle its commodity customers' funds with the funds of MFGI, Holdings, and/or MFGI's securities customers; and (d) did not use its commodity customers' funds to margin or guarantee the trades or contracts, or to secure or extend the credit, of MFGI and others. The MFGI Commodity Customers further allege that Holdings aided and abetted MFGI's violations and breaches of fiduciary duty by using MFGI commodity and derivative customer funds to margin or guarantee the trades or contracts, or to secure or extend the credit, of MFGI, Holdings, and others, rather than the customers for whom the property was held. Finally, the MFGI Commodity Customers allege that Holdings aided and abetted MFGI's conversion of customers' segregated funds by exercising dominion and control over the customer property in segregated accounts at MFGI.

The Customer Class Claim in this action, as amended on August 22, 2012, seeks recovery of any net equity shortfall and compensatory damages from the estate of Holdings on behalf of Class Claimants individually and on behalf of all other similarly situated MFGI Commodity Customers. *See* Exhibit A. Damages to the MFGI Commodity Customers have been accruing since October 31, 2011, and continue to accrue, as a result of the alleged misconduct by Holdings.

ARGUMENT

A properly completed proof of claim is *prima facie* evidence of the validity and amount of a claim. Fed. Bankr. R. P. 3001(f). The party objecting to a proof of claim bears the initial burden of providing evidence to show the presumption of *prima facie* validity is overcome does the burden shift to the claimant. *See In re Oneida Ltd.*, 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009). Although an objection may be based on legal contentions rather than evidence, *see, e.g.*, *In re Lenz*, 110 B.R. 523, 525 (D. Colo. 1990), the burden nonetheless remains on the objecting party to establish that the proof of claim lacks a sound legal basis. *See In re Jimenez*, 472 B.R. 106, 113 n.36 (Bankr. M.D. Fla. 2012).

The MFGI Commodity Customers allege that Holdings aided and abetted MFGI's violations of the CEA and CFTC regulations, breach of fiduciary duty, and conversion of segregated funds. Although the Ninth Objection repeatedly refers to "Duplicate MFGI Customer Claims," Plan Proponents do ***not*** contend that the claims are "duplicative" in the sense that MFGI Commodity Customers cannot allege, as a matter of law, substantive claims against MFGI and aiding and abetting claims against Holdings. Nor could they: aiding and abetting is a separate cause of action. *See, e.g.*, *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986) (aiding and abetting violations of the CEA); *Johnson v. Nextel Comms., Inc.*, 660 F.3d 131, 142

(2d Cir. 2011) (aiding and abetting a breach of fiduciary duty under New York law).

Instead, Plan Proponents advance a very different, entirely speculative argument, that because "multiple recoveries for an identical injury are generally disallowed," MFGI Commodity Customers' recovery is limited to their net equity. (Ninth Objection ¶¶ 14-17.) This argument, premised on a *theoretical* 100% recovery of net equity through the SIPA proceedings, has no record support.[3] Moreover, not only do Plan Proponents prematurely invoke the "one satisfaction rule," they overlook entirely the essence of that argument – satisfaction of the claimants' *injury* – which here requires compensation for all the MFGI Commodity Customers' losses, including prejudgment interest and other compensatory damages.

The "one satisfaction rule" provides that a plaintiff is entitled to only one satisfaction for a single injury. *Singer v. Olympia Brewing Co.*, 878 F.2d 596, 600 (2d Cir. 1989); *see also BUC Int'l Corp v. Int'l Yacht Council Ltd.*, 517 F.3d 1271, 1277 (11th Cir. 2008) (copyright infringement case); *Gerber v. MTC Elec. Techs. Co., Ltd.*, 329 F.3d 297, 303-04 (2d Cir. 2003) (federal securities case); *Screen Gems-Columbia Music, Inc. v. Metlis & Lebow Corp.*, 453 F.2d 552, 553-54 (2d Cir. 1972) (copyright infringement case). This rule, which reflects elementary principles of tort law, is applied *after judgment*, typically to reduce the amount of the final judgment by amounts paid by nonsettling defendants for the same injury. *See Singer*, 878 F.2d at 600 ("when a plaintiff receives a settlement from one defendant, a nonsettling defendant is

[3] Although the instant Objection does not elaborate on Plan Proponents' theory that the MFGI Commodity Customers will ultimately receive the entirety of their net equity, in a related Objection to the proof of claim filed by an individual customer, Plan Proponents contend that "it is likely that Sapere's claims in the SIPA case will be paid in full." (Objection to Proof of Claim Number 1491 Filed By Sapere CTA Fund, L.P. [ECF dkt. No. 1081] at 9.) In purported support, Plan Proponents rely on a letter agreement that states the Chapter 11 Trustee intends to pay 100% of customers' "net equity claims." This letter agreement is not a judicially binding settlement, and on its face indicates only that the Chapter 11 Trustee would "*support* the allocation of or loan from MFGI unallocated property" to repay the net equity. *Id.* (emphasis added). Other creditors of MFGI and Holdings may not agree to this proposal, and until the issue of whether MFGI's unallocated property may be used to satisfy MFGI Commodity Customers' net equity claims is resolved, the Plan Proponents' position regarding the net equity claims is pure speculation.

entitled to a credit of the settlement amount against any judgment obtained by the plaintiff against the nonsettling defendant as long as both the settlement and judgment represent common damages"). Plan Proponents cite no authority that applies the one satisfaction rule in the context of a Rule 3001 proceeding rather than at the post-judgment stage.

Moreover, Plan Proponents misapprehend the nature of the MFGI Commodity Customers' injury, and their individual and class claims against Holdings, which are *not* limited to the net equity in their customer accounts. On the contrary, the MFGI Commodity Customers are entitled to be made whole, which at a minimum also includes prejudgment interest, costs, and other compensatory damages. As this Court has recognized, "absent a sound reason to deny prejudgment interest, such interest should be awarded." *McHale v. Boulder Capital LLC*, 439 B.R. 84, 87 (Bankr. S.D.N.Y. 2010) (citation omitted); *see also Donovan v. Sovereign Security, Ltd.*, 726 F.2d 55, 58 (2d Cir. 1984) ("Failure to award interest would create an incentive to violate [federal law], because violators in effect would enjoy an interest-free loan for as long as they could delay paying out…."); *Gates v. Towery*, 430 F.3d 429, 431 (7th Cir. 2005) (holding, as a matter of law, that plaintiffs are not "made whole" by defendants' tender of the value of the money seized; even "a *promise* of interest tomorrow differs from cash today"). Here, the MFGI Commodity Customers are entitled to prejudgment interest on their claims for Holdings' aiding and abetting MFGI's breach of fiduciary duty and conversion. N.Y.C.P.L.R. § 5001(a) requires that "Interest shall be recovered upon a sum awarded because of … an act or omission depriving or otherwise interfering with title to, or possession or enjoyment of, property…." Under New York law, the interest to be awarded is to be calculated at 9%. N.Y.C.P.L.R. § 5004. On its face, the New York prejudgment interest statute governs damages for the conversion claim. Case law makes equally clear that this statute applies to the claim for aiding and abetting MFGI's

breach of fiduciary duty.[4]

The crux of the Ninth Objection is that "under SIPA and the Part 190 Regulations, a customer is only entitled to satisfaction of its claim to the extent of its net equity" (Ninth Objection ¶ 15) and that the SIPA Trustee "is the only party that may recover customer property" for distribution "to all customers on account of their net equity" (Ninth Objection ¶ 16). These arguments are meritless.

SIPA and the Part 190 regulations cited by the Plan Proponents apply only in a SIPA proceeding or a commodity broker liquidation under the Bankruptcy Code. Neither SIPA nor the Part 190 regulations apply to Holdings and it may not rely on them to limit its liability to the Customer Class Claimants.

Customer Class Claimants also disagree that the cited SIPA provisions and Part 190 regulations include restrictions on recovery from Holdings or any other party for the consequential damages the Customer Class Claimants have suffered. And in any case, as discussed above, the Customer Class Claim reaches beyond SIPA and beyond the "net equity" recovery sought by the SIPA Trustee.

Finally, the Plan Proponents cite no support for their claim that the SIPA Trustee is "the appropriate party to bring [the MFGI customer] claims." (Ninth Objection ¶ 11).

CONCLUSION

For the reasons stated above, because Plan Proponents fail to carry their burden that allowing the claims of the MFGI Commodity Customers would lead to duplicative recovery, this

[4] *See Beeck v. Costa*, 959 N.Y.S.2d 628, 642, 2013 N.Y. Slip Op. 23024 (Sup. Ct. N.Y. County 2013) ("The award of prejudgment interest in cases of fraud, unjust enrichment and breach of fiduciary duty is proper where a defendant wrongly held a plaintiff's money.") (collecting cases); *see also Miot v. Miot*, 24 Misc.3d 1224(A), 2009 WL 2195787, at *8 (Sup. Ct. N.Y. County 2009) (collecting cases), *aff'd* 78 A.D.3d 464, 910 N.Y.S.2d 436 (1st Dept. 2010).

claim retains the presumption of *prima facie* validity. Plan Proponents' Ninth Objection should be overruled as it relates to the Customer Class Claim.[5]

Dated: May 17, 2013

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[5] In addition, for all the reasons set forth herein, Ninth Objection should be overruled also as to the individual proofs of claim filed by certain of the Customer Class Claimants against Holdings listed in Exhibit A to the Ninth Objection (Paradigm Global Fund I Ltd. (Claim No. 1606), Paradigm Equities Ltd. (Claim No. 1609), Paradigm Asia Fund Ltd. (Claim No. 1601), Augustus International Master Fund, L.P. (Claim No. 1607), William Schur (Claim No. 1605), Futures Capital Management, LLC (No. 1604), Ali A. Rangchi Bozorki (Claim No. 1602), John Andrew Szokolay (Claim No. 1182), Donald Tran (Claim No. 1183), Thomas G. Moran (Claim Nos. 1179-1181), Kay P. Tee, LLC (Claim No. 1177), William Fleckenstein (Claim No. 1176), and Bearing Fund LP. (Claim No. 1332)).[5] Pollack Commodity Partners (Claim No. 1603); Walter Richard Lee (Claim No. 1608) and Mahadeb Kundu (Claim No. 1600) join this response.

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EXHIBIT A

B 10 (Official Form 10) (04/10)

UNITED STATES BANKRUPTCY COURT Southern DISTRICT OF New York	PROOF OF CLAIM
Name of Debtor: MF Global Holdings	Case Number: 11-15059

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):
See attached listing

Name and address where notices should be sent:
See attached listing

Telephone number:

☑ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number: 7-1
(*If known*)

Filed on: 3/20/12

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ Undetermined

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: See attached Statement of Claim
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: n/a

3a. Debtor may have scheduled account as: n/a
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property: $_____ **Annual Interest Rate** _____%

Amount of arrearage and other charges as of time case filed included in secured claim,

If any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to $11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See instruction 7 and definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

THE GARDEN CITY GROUP, INC. 2012

Date: 8/22/12

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Michael H. Moirano, Attorney, 200 W. Adams St., Ste 2500, Chicago, IL 60606 (312)696-2508

FOR COURT USE ONLY

THE GARDEN CITY GROUP, INC. AUG 2012

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Name of Creditors

Robert Tierney, James Groth, Brian Fisher, Shane McMahon, Michael Mette, Timothy Zaug, Paradigm Global Fund I Ltd., Paradigm Equities Ltd., Paradigm Asia Fund Ltd., Augustus International Master Fund, L.P., Zybr Holdings, LLC, William Schur, Futures Capital Management, LLC, Ali A. Rangchi Bozorki, MTrust FBO James Mayer, MTrust Co. FBO James Mayer, John Andrew Szokolay, Donald Tran, Thomas G. Moran, Kay P. Tee, LLC, William Fleckenstein and Bearing Fund LP.

Individually and on behalf of all others similarly situated.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	
	)	Case No. 11-2790 (MG) SIPA
MF GLOBAL HOLDINGS, LTD.	)	
	)	
Debtor.	)	

AMENDED STATEMENT OF CLASS CLAIM

Robert Tierney, James Groth, Brian Fisher, Shane McMahon, Michael Mette, Timothy Zaug, Paradigm Global Fund I Ltd., Paradigm Equities Ltd., Paradigm Asia Fund Ltd., Augustus International Master Fund, L.P., Zybr Holdings, LLC, William Schur, Futures Capital Management, LLC, Ali A. Rangchi Bozorki, MTrust FBO James Mayer, MTrust Co. FBO James Mayer, John Andrew Szokolay, Donald Tran, Thomas G. Moran, Kay P. Tee, LLC, William Fleckenstein and Bearing Fund LP, individually and on behalf of the Class of all others similarly situated ("Claimants") state as their Claim against MF Global, Inc. as follows:

1. Claimants are commodities customers of MF Global, Inc. ("MFGI"), a subsidiary of the debtor MF Global Holdings, Ltd. ("MF Holdings"). Claimants were customers of MFGI who maintained significant balances in their trading accounts at the firm. MFGI's customer funds were not properly segregated and maintained in compliance with applicable federal requirements, among others, and as much as $1.6 billion in customer money is reported to be missing and unaccounted for, including funds belonging to the Claimants. In addition, Claimants have accrued significant damages by virtue of being without access to their funds for a substantial period of time.

2. MFGI, together with MF Holdings, was responsible for insuring that the Claimants' property was properly segregated and accounted for, and not used or applied for any improper purposes. Claimants are informed and believe that a substantial portion of the $1.6 billion in customer funds will not be recovered and returned to MFGI's customers. Through this Class Claim, Claimants, individually and on behalf of the Class of all others similarly situated, seek to recover from MFGI the damages they sustained as a result of this loss of their property.

PARTIES

3. Claimants Robert Tierney, James Groth, Brian Fisher, Shane McMahon, Michael Mette, Timothy Zaug Paradigm Global Fund I Ltd., Paradigm Equities Ltd., Paradigm Asia Fund Ltd., Augustus International Master Fund, L.P., Zybr Holdings, LLC, William Schur, Futures Capital Management, LLC, Ali A. Rangchi Bozorki MTrust FBO James Mayer, MTrust Co. FBO James Mayer, John Andrew Szokolay, Donald Tran, Thomas G. Moran, Kay P. Tee, LLC, William Fleckenstein and Bearing Fund LP., each opened one or more commodity futures and derivatives trading accounts with MFGI. Each claimant had a balance, and in some instances open positions, in their accounts on October 31, 2011.

4. MFGI, together with MF Holdings, acting through their respective directors and officers, was responsible for insuring MFGI's compliance with all applicable federal laws and regulations concerning the segregation and maintenance of MFGI's customer funds.

BACKGROUND FACTS

5. MFGI was a futures commission merchant ("FCM") registered with the Commodity Futures Trading Commission ("CFTC") and subject to the requirements of the CEA and the rules and regulations promulgated thereunder.

6. Section 6d(a) of the CEA provides in relevant part:

> **It shall be unlawful for any person to engage as futures commission merchant** or introducing broker in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, **on or subject to the rules of any contract market or derivatives transaction execution facility unless–**
>
> * * * * *
>
> **(2) such person shall, if a futures commission merchant**, whether a member or nonmember of a contract market or derivatives transaction execution facility, **treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such**

> **trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held.**

7 U.S.C § 6d(a)(emphasis added).

7. Consistent with the CEA's requirement to segregate and separately account for customer property, MFGI represented on its website that:

> MF Global is dedicated to preserving the safety and security of your assets.
>
> Through our internal safeguard policies and a strict adherence to the law, our goal is to protect your interests in every aspect of our relationship.
>
> **When You Trade Futures**
>
> To ensure the integrity of your funds, MF Global follows stringent rules to separate you futures transaction assets from those used to fulfill MF Global's own obligations and liabilities. We hold client assets in a separate account that is legally and physically distinct from our own accounts. This client asset account is subject to rigorous accounting processes as well as regulatory reporting and auditing.

www.mfglobal.com

8. It is estimated that on or about October 31, 2011, MFGI had approximately 38,000 commodity customer accounts containing customer funds and assets with a value totaling approximately $5.45 billion. In accordance with the requirements of the CEA, all of these customer funds and assets should have been segregated and separately maintained in an account for the exclusive benefit of MFGI's commodities customers.

MFGI'S COLLAPSE

9. In the weeks prior to October 31, 2011, it was widely reported that MF Holdings was engaging in highly leveraged and speculative trading in foreign sovereign bonds. It is estimated that MF Holdings' position in these foreign sovereign bonds exceeded $11 billion. These bond investments were made for MF Holdings own account, and were to be financed and supported with MF Holdings' own money and assets.

10. Due to rapidly deteriorating financial circumstances in the countries which had issued the bonds, MF Holdings' position in the bonds lost significant value. This decline in value required MF Holdings' to pledge or provide additional assets to support its bond position. Further, in October, 2011, MF Holdings, which was a publicly traded company listed on the New York Stock Exchange, reported significant losses. This reporting caused its own bonds to decrease dramatically in value, making it even more difficult for MF Holdings to borrow additional funds to support its deteriorating sovereign bond position.

11. In a desperate effort to salvage its business, in the days leading up to October 31, 2011, MF Holdings attempted to sell its assets, including MFGI, to a third-party; however, that effort failed when, during the weekend of October 29-30, 2011, it was discovered that MFGI could not account for all of the customer funds that should have been segregated and separately maintained for the benefit of MFGI's commodities customers. Claimants are informed and believe that as part of its last ditch efforts to shore up its financial position, MF Holdings acting through MFGI sold billions of dollars in investments, including investments made with MFGI's customer segregated funds, and then used the proceeds of those sales, including the proceeds from the sale of investments made with customer segregated funds, to pay MFGH and MFGI's

own obligations.

12. On October 31, 2011, as a result of MFGI's apparent segregation violations, MFGI's clearing privileges at the major commodities and derivative clearing organizations, including its privileges on the exchanges operated by the CME Group ("CME"), were suspended and MFGI was put on a "liquidation only" status. The CME was MFGI's designated self-regulatory organization ("DSRO"), and at that time held about $2.5 billion in MFGI customer segregated funds.

13. Also as a result of MFGI's apparent segregation violations and the suspension of its clearing privileges, approximately 38,000 active commodity customer accounts, including Claimants' accounts, were frozen on October 31, 2011, making it impossible for Claimants and all of MFGI's commodity customers to access their accounts, or the funds or other assets in those accounts.

MFGI'S SIPA LIQUIDATION AND MF HOLDINGS' BANKRUPTCY FILING

14. Although MFGI was primarily a commodity futures and commodity option broker, it was also a registered securities broker-dealer, and maintained approximately 330 active securities accounts for securities customers, including accounts for MF Holdings.

15. On October 31, 2011, the Securities Investor Protection Corporation ("SIPC") filed an action for the entry of a protective order placing MFGI in liquidation under the Securities Investor Protection Act of 1970, as amended ("SIPA"), 15 U.S.C. § 78aaa *et seq*. SIPC's request to place MFGI in liquidation was based on information provided to the United States Securities and Exchange Commission ("SEC") by MF Holdings indicating that MFGI was unable to make

the computations necessary to establish compliance with the financial responsibility requirements under section 15(c)(3), and the record keeping requirements under section 17(a) of the Securities and Exchange Act of 1934, 15 U.S.C. §§ 78o(c)(3) and 78q(a).

16. Subsequently on October 31, 2011, an Order was entered commencing the liquidation of MFGI pursuant to the provisions of SIPA (the "MFGI Liquidation Order"), and an independent trustee (the "SIPA Trustee") was appointed to liquidate MFGI's business pursuant to § 78eee(b)(3) of SIPA.

17. Also on October 31, 2011, MF Holdings filed a voluntary petition under Chapter 11 of the U.S. Bankruptcy Code.

18. Following MF Holdings bankruptcy filing and the entry of the MFGI Liquidation Order, at approximately 7:18 p.m. (EST) on October 31, 2011, Laurie Ferber, General Counsel for MF Holdings, sent an e-mail to the SEC, the CFTC, and the CME stating:

> This is to inform you that MF Global, Inc. has discovered a significant shortfall in its segregated funds account. The company is continuing to review the circumstances of the shortfall.

EFFORTS TO RECOVER AND RETURN MFGI CUSTOMER FUNDS

19. Under SIPA section 78fff-1(b), 15 U.S.C., § 78fff-1(b), when, as here, a FCM is liquidated, the SIPA trustee has all of the duties imposed under the commodity broker liquidation provisions of Chapter 7 of the Bankruptcy Code. Under section 766(h) of the Bankruptcy Code, 11 U.S.C. § 766(h), a trustee in a commodity broker liquidation is required to distribute customer property held by the debtor ratably to its commodity customers on the basis and to the extent of each customer's net equity in their accounts.

20. Pursuant to CFTC rules, and consistent with SIPA, a trustee liquidating a commodity broker also has a duty to make immediate and best efforts to effect the transfer of open customer positions. 17 C.F.R. § 190.02(e)(1); 17 C.F.R. § 190.6(e) and (f).

21. A substantial majority of MFGI's commodity customers cleared their transactions through the CME. Almost immediately upon entry of the MFGI Liquidation Order, the SIPA Trustee and the CME began the daunting task of attempting to identify and transfer to other FCMs approximately 14,500 MFGI customer accounts with open commodity positions. At that time there were more than 3 million open positions in these accounts with a notional value of approximately $100 billion.

22. On or about November 7, 2011, the SIPA Trustee, in conjunction with the CME, was able to transfer approximately 14,500 MFGI customer accounts with open positions, plus approximately $1.5 billion in customer funds and property, to new FCMs.

23. The SIPA Trustee, working in conjunction with the CME, was also able to identify an additional 23,300 customer accounts which, as of October 31, 2011, were holding customers' cash or other customer assets only in their accounts. Beginning on or about November 18, 2011, the SIPA Trustee began to return some of the cash and property held in the MFGI customer accounts to the MFGI customers who held those accounts.

24. The SIPA Trustee recently notified MFGI's customers that he expects to distribute approximately 80% of the funds and other property they had on deposit with MFGI when the liquidation of MFGI was commenced on October 31, 2012.

25. Despite the distributions made and proposed to be made by the SIPA Trustee to date, the Trustee has estimated that there will be a significant shortfall in the customer funds and

other customer property available for distribution to MFGI's commodity customers, and that the shortfall could be as much as $1.6 billion. As a result MFGI's customers will not receive 100% of their property which had been held for them in their MGHI accounts.

26. Further, it has taken the SIPA Trustee, working with the CFTC, the SEC and the CME nearly to determine precisely what happened to the missing funds. This delay was caused in part because MFGI's books and records were in disarray when the MFGI Liquidation Order was entered.

CLASS ACTION ALLEGATIONS

27. Claimants file this claim on behalf of themselves and as the representative of the following class:

> All persons who, on October 31, 2011, were commodity futures or options customers of MFGI, and who had their own cash or other property on deposit with MFGI to be used to trade commodities or derivatives on U.S. or foreign contract markets.

28. Each of the proposed class members have been affected by the MF Holdings' misconduct in identical ways. Under the commodity broker liquidation provisions of the Bankruptcy Code, and CFTC rules promulgated thereunder, each class member will receive from the SIPA Trustee only an pro rata share of the customer funds held by MFGI based upon the net equity in their account on October 31, 2011. The funds distributed by the Trustee will not provide any class member with a 100% recovery of their property and, as a consequence, each class member will share pro rata in the shortfall in customer funds. As described further below, this shortfall was caused by MF Holdings' failure to ensure compliance with the segregation and

customer fund maintenance requirements of the CEA and CFTC regulations, and MFGI's own internal policies and procedures, and its misconduct affected each class member in the same way. Further, MFGI customers' funds were converted and used to satisfy obligations of MF Holdings resulting in losses to the class.

29. There are as many as 38,000 members of the class. The class is so numerous and the members of the class are so dispersed geographically that it is impracticable for each member of the class to file and litigate individual disputed claims.

30. There are questions of fact and law common to the class that predominate over any questions affecting individual class members. These predominating questions include, but are not limited to:

(a) whether MFGI violated the CEA and implementing CFTC regulations by failing to segregate and separately maintain MFGI's commodity customers' property;

(b) whether the MF Holding Defendant aided and abetted MFGI's violations of the CEA and implementing CFTC regulations by failing to adopt and enforce proper policies and procedures to ensure the segregation and separate maintenance of MFGI's customer property;

(c) whether MFGI violated the CEA and implementing CFTC regulations by allowing Defendant and/or MFGI to use MFGI's customer property for improper or illegal purposes;

(d) whether the MF Holdings willfully aided and abetted MFGI's violation of the CEA and implementing CFTC regulations by using MFGI's customer

property for improper or illegal purposes;

(e) whether MFGI had a fiduciary duty to ensure the safety and security of its customers' property;

(f) whether MFGI breached its fiduciary duty by failing to ensure the safety and security of its customers' property;

(g) whether the MF Holdings aided and abetted MFGI's breach of its fiduciary duty by failing to enforce MFGI's internal policies and procedures designed to ensure the safety and security of its customers' property, and/or illegally using MFGI's customer funds; and

(h) whether MF Holdings converted funds or other property that belonged to MFGI's customers.

31. The claims made by Claimants herein are typical of the claims of the class in that the provisions of the CEA and CFTC regulations which are alleged to have been violated apply equally and in the same respect to each class member, and MF Holdings is alleged to have violated and/or aided and abetted violations of those provisions in the identical way. Similarly, the claims arising out of MFGI's violations of its own internal policies and procedures, designed to ensure the safety and security of customer property, apply with equal force and in the same way to each class member, and MF Holdings' failure to enforce those policies and procedures, and its conduct which aided and abetted a violation of the those policies and procedures, was identical in all circumstances. In addition, to the extent MFGI customer funds were converted and used to satisfy MF Holdings' obligations, each class members was harmed by such conversion in an identical way.

32. Claimants will fairly and adequately represent and protect the interests of the members of the class. Claimants have no conflicts which would impair their ability to represent the class, and they have retained counsel competent and experienced in class actions to prosecute their claims.

33. Maintenance of a class claim is an appropriate method for the fair and efficient adjudication of all claims arising out of MF Holdings' conduct related to MFGI's admitted failure to properly segregate its customers' property and funds.

AIDING AND ABETTING MFGI'S VIOLATION OF CEA

34. Section 25(a)(1) of the CEA provides in relevant part:

> (1) Any person (other than a registered entity or registered futures association) who violates this chapter or who willfully aids, abets, counsels, induces, or procures the commission of a violation of this chapter shall be liable for actual damages resulting from one or more of the transactions referred to in subparagraphs (A) through (D) of this paragraph and caused by such violation to any other person –
>
> * * * * *
>
> (B) who made through such person any contract of sale of any commodity for future delivery (or option on such contract or any commodity); or who deposited with or paid to such person money, securities, or property (or incurred debt in lieu thereof) in connection with any order to make such contract;

7 U.S.C. § 25(a)(1).

35. Each of the Claimants and putative class members opened commodity futures trading accounts with MFGI and deposited with MFGI money, securities or other property in connection with the placement of orders for commodity futures contracts.

36. MFGI violated the segregation and customer funds maintenance requirements of section 6d of the CEA and the CFTC regulations promulgated thereunder by, among other things:

(a) failing to treat and deal with all money, securities, and property received

by it to margin, guarantee, or secure the trades or contracts of its customers, or accruing to its customers as the result of such trades or contracts, as belonging to such customer; and

(b) failing to segregate and separately account and not commingle its customer funds with the funds of MFGI, MF Holdings or their securities customers, or to use such funds and property to margin or guarantee the trades or contracts, or to secure or extend the credit, of MFGI, MF Holdings or any other customer or person other than the customer for whom the property was held.

37. MF Holdings willfully aided and abetted MFGI's violations of the CEA and CFTC regulations by knowingly and intentionally:

(a) failing to implement and enforce policies and procedures which would insure that MFGI's customer property, deposited for commodity futures trading, would be treated as belonging exclusively to such customers;

(b) failing to implement and enforce policies and procedures which would insure that MFGI segregated and separately accounted for MFGI's commodity customers' property;

(c) failing to implement and enforce policies and procedures which would insure that MFGI did not commingle its commodity customers' funds with the funds of MFGI, MF Holdings, and/or MFGI's securities customers;

(d) failing to implement and enforce policies and procedures which would insure that MFGI did not use its commodity customers' funds to margin or

guarantee the trades or contracts, or to secure or extend the credit, of MFGI, MF Holdings, and/or any other customer or person other than the customer for whom the property was held; and

(e) allowing MFGI and MF Holdings to use MFGI commodity and derivative customer funds to margin or guarantee the trades or contracts, or to secure or extend the credit, of MFGI, MF Holdings, or other customers or persons other than the customers for whom the property was held.

38. As a direct and proximate consequence of MF Holdings' acts described above, Claimants and the members of the putative class have lost a substantial portion of the property they deposited with MFGI to trade commodity futures contracts, have been denied the use of their property, and have been damaged thereby.

AIDING AND ABETTING MFGI'S BREACH OF FIDUCIARY DUTY

39. MFGI exercised complete dominion and control over its commodity customers' money, securities, or other property which had been deposited with and entrusted to MFGI to allow such customers to trade commodity futures contracts through MFGI.

40. MF Holdings and MFGI promised MFGI's customers that they would preserve the safety and security of their property by adopting internal safeguard policies designed to ensure the preservation of such property. MF Holdings and MFGI also promised that, in order to ensure the integrity of its customers' funds, they would follow stringent rules to separate its customers' assets from those used to fulfill their own obligations and liabilities, and would hold MFGI's commodity customers' assets in a separate account that would be legally and physically distinct from MF Holdings and MFGI's own accounts, and subject to rigorous accounting processes as

well as regulatory reporting and auditing.

41. As the custodian of the MFGI customers' funds, MFGI owed its commodity customers, including Claimants, a fiduciary duty to preserve and protect their assets, to act solely in their customer's best interests in connection with its custody and control of their assets, and to avoid any self-dealing.

42. MFGI breached its fiduciary duty to Claimants and the members of the class by, among other things:

(a) failing to preserve the safety and security of the Claimants' assets;

(b) failing to adopt and adhere to internal safeguard policies designed to preserve the Claimants' property;

(c) failing to separate their assets from those used to fulfill MFGI's own obligations and liabilities;

(d) failing to maintain the Claimants' assets in a separate account that was legally and physically distinct from MFGI's own accounts;

(e) failing to subject its segregated customer funds account to rigorous accounting processes which would insure the integrity of the funds in such account; and

(f) allowing Claimants' and the class members' property to be used for improper and illegal purposes.

43. MF Holdings, which was responsible for ensuring MFGI's compliance with its own internal policies and procedures and the performance of its fiduciary duties to its customers, and had represented to the MFGI Customers that it would ensure the safety and integrity of

MFGI's customer segregated funds, aided and abetted MFGI's breach of its fiduciary duties to Claimants and the members of the class by, among other things:

(a) failing to properly supervise MFGI to ensure that it was preserving the safety and security of its customers' assets;

(b) failing to require MFGI to adopt and/or adhere to internal safeguard policies designed to preserve its customers' property;

(c) failing to require MFGI to separate its customers' assets from those used to fulfill MFIG's and MF Holdings obligations and liabilities;

(d) failing require MFGI to maintain its customers assets in a separate account that was legally and physically distinct from MFGI's own accounts;

(e) failing to subject MFGI's segregated customer funds account to rigorous accounting processes which would insure the integrity of the funds in such account; and

(f) authorizing and allowing MFGI's customer funds to be used for improper or illegal purposes.

44. As the direct and proximate consequence of MF Holdings' conduct described above, Claimants have lost a substantial portion of the money, securities, or other property they deposited with MFGI to trade commodity futures contracts, have been denied the use of their property, and have been damaged thereby.

CONVERSION/AIDING AND ABETTING CONVERSION

45. At all times pertinent hereto the MFGI and MF Holdings exercised dominion and control over the customer property money in segregated accounts at MFGI.

46. Between October 25 and October 29, 2011, MF Holdings, or persons acting on its behalf, authorized and directed, or knowingly and substantially assisted others who authorized and directed, the transfer of more than $900 million MFGI customer-owned funds to or for benefit of third-parties, including MF Holdings and its affiliated Debtors.

47. The delivery of the MFGI customers' property to or for the benefit of these third-parties, including MF Holdings and its affiliated Debtors, was not done for any purpose for which MF Holdings or any other person was authorized to transfer customer-owned property.

48. By reason of these improper transfers of customer-owned funds, MF Holdings unlawfully converted, or knowingly and substantially assisted in the conversion of, MFGI's customer property and MF Holdings and its affiliated Debtors benefitted thereby.

49. As a direct and proximate consequence of MF Holdings' conduct, Plaintiffs and the members of the class have lost a significant portion of the money, securities, and property they paid and delivered to MFGI to margin, guarantee, or secure their commodity or options trading, have been denied the use of their assets, and have been damaged thereby.

WHEREFORE, Claimants seek payment from the MF Holdings', and/or its affiliated Debtors', estates of an amount sufficient to compensate them individually and each member of the putative class for the damage they have suffered as a result of the conversion of their funds.

/s/ Michael H. Moirano

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