

FORD MARRIN ESPOSITO WITMEYER & GLESER, L.L.P.
John J. Witmeyer III
Jon R. Grabowski
Wall Street Plaza
New York, New York 10005
(212) 269-4900

Attorneys for Sapere

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

-----X	
In re	: Chapter 11
	:
MF GLOBAL HOLDINGS LTD., <u>et al.</u> ,	: Case No. 11-15059 (MG)
	:
Debtors.	: Jointly Administered
	:
-----X	

**[EXPEDITED] MOTION BY SAPERE WEALTH MANAGEMENT, LLC,
GRANITE ASSET MANAGEMENT AND SAPERE CTA FUND, L.P. TO DIRECT THE
DEBTORS' ESTATE TO BE ADMINISTERED
PURSUANT TO 11 U.S.C. §§ 761-767 AND 17 C.F.R. § 190**

Sapere Wealth Management, LLC, Granite Asset Management, and Sapere CTA Fund, L.P. (collectively, "Sapere") hereby move for an order directing the Debtors-in-Possession, their non-debtor subsidiaries and affiliates (collectively, "MF Global") and the bankruptcy Trustee to administer the Debtors' estates pursuant to 11 U.S.C. §§ 761-767 and 17 C.F.R. § 190 and applying those provisions throughout the future of these cases. The effect of this order will provide priority status to commodities customers to the extent of their segregated accounts at MF Global, Inc. ("MFGI"), a subsidiary of Debtor MF Global Holdings, Ltd. ("Holdings"). MFGI is presently in Securities Investor Protection ("SIPA") liquidation in this Court in related Case No. 11-2790 (MG) SIPA. This motion affects the overall administration of the Debtors' estate,

including decisions on issues affecting priority such as, but not limited to, Cash Collateral and Cash Management Orders.

It is appropriate to make this decision now because the issue of claimant priority can impact a variety of future decisions by various parties about the Debtors' estates and administering thereof. The Bankruptcy Code, including Section 105 (11 U.S.C. § 105), and 28 U.S.C. § 157(b)(1) & (2)(A), authorizes the bankruptcy court to issue any order necessary or appropriate to carry out the provisions of the Code and decide matters concerning the administration of a debtor's estate.

RELEVANT FACTS

This motion results from the actions of MF Global — the financial firm headed by former Goldman Sachs CEO and Co-Chairman, former New Jersey Governor and former US Senator Jon Corzine — which exercised dominion and control over millions (if not billions) of dollars in commodities customers' segregated account funds in October 2011 and earlier. MF Global did so, as reported by the press,¹ to facilitate highly risky transactions by Holdings, orchestrated by its more senior officials including Corzine, in multiple billions of Euro-denominated securities including off-balance-sheet repurchase-to-maturity transactions. The direct result has been that at least \$600 million and up to \$1.2 billion or more of segregated account funds of commodities customers have gone “missing,” with the SIPA Liquidation Trustee having recently announced that he intends to stop transferring funds to segregated-account customers, leaving the possibility that segregated-account customers may never receive their full distributions.

MF Global had transformed the segregated-account customers into involuntary (and unknowing) participants in risky futures transactions against which the Dodd-Frank Act, the

¹ We have attached as Exhibit A some of the press reports. Unfortunately, the Debtors, their counsel and the SIPA Liquidation Trustee have made it a point of not putting factual information on the Court record.

Commodity Exchange Act and the CFTC rules were designed to protect.² Self-evidently, MF Global either never built or tore down the jural wall that should separate a Futures Commission Merchant (“FCM”) from a non-registered parent that makes risky bets – putatively for its own account and without involving commodities customers – although positioned to control the FCM. MF Global cast aside or destroyed the wall, acting for the benefit of the parent (Holdings) while dragging along as involuntary participants the commodities customers whose segregated-account funds provided the means to effectuate the risky futures trades (apparently doing so off-the-books of the parent).

The downfall of MF Global ensued. On October 31, 2011, MF Global reported to the Securities & Exchange Commission (“SEC”) and Commodities Futures Trading Commission (“CFTC”) possible shortfalls in customer segregated accounts held at the firm. As a result, the SEC and CFTC determined that a Securities Investor Protection Corporation (“SIPC”)-led bankruptcy proceeding would be the safest and most prudent course of action to safeguard customer accounts and assets, and SIPC initiated the liquidation of MF Global’s FCM business under the SIPA.

Holdings and its debtor subsidiaries/affiliates filed for reorganization on October 31, 2011. Contemporaneously, MFGI entered SIPA liquidation on October 31.

MF Global was one of the world’s largest FCMs, in addition to being a primary dealer in US Treasuries securities by designation of the Federal Reserve Bank of New York. Tens of thousands of commodities customers held segregated accounts containing billions of dollars of commodities positions, cash and cash-equivalents.

² Debtor Holdings had its Futures Commission Merchant business unit solicit futures orders from commodities customers such as Sapere and Holdings subsequently took and accepted the money, securities and property that the commodities customers deposited to margin, secure or guarantee their futures trades and contracts, and used them for other futures trades. Unbeknownst to the commodities customers, their segregated accounts’ money, securities and property secured and facilitated Holdings’ unlawful high-risk futures activities.

As of October 31, 2011, Sapere had \$241 million in its segregated account as a commodities customer. On November 11, 2011, the SIPA Liquidation Trustee transferred to Sapere commodities positions and approximately \$70 million in cash in a new account that the SIPA Liquidation Trustee set up with ADM Investor Services. To date, Sapere has received no further transfers, nor has the Trustee responded to several inquiries requesting information regarding when, if at all, a further transfer will be made. As noted earlier, the press has reported that the SIPA Liquidation Trustee disclosed that at least \$600 million and up to \$1.2 billion or more is missing from the commodities customers' segregated accounts.

ARGUMENT

This case presents a fundamental question, believed to be one of first impression. In fact, this also appears to be the first time that the liquidation of an FCM has created a shortfall of funds in customer segregated accounts, for which there is no plan to cover. The Debtors did not register themselves as FCMs. The Debtor Holdings, however, exercised dominion and control over its FCM business unit (MFGI), doing so for the parent's benefit (facilitating risky bets on futures transactions involving Eurobonds of troubled European countries) and over the segregated-account funds of commodities customers who dealt with the business unit, all to their substantial detriment when by law they should have been kept 100% whole.

This occurred in a scandal, in which the highest corporate officials of Debtor Holdings participated. The resulting scandal has rocked the US commodities markets to their foundations and shaken to its core the confidence, once had by persons ranging from small farmers in America's heartlands to investors and traders across the world, in the reliability of the US commodities markets, US legal protections of segregated accounts and faith in the American legal system.

The Debtor MF Global apparently takes the positions that it has no obligation under the Commodity Exchange Act, the Dodd Frank Act, and the CFTC regulations, that the claims of commodities customers of the Debtors in-form-only (insofar as relevant here) MFGI subsidiary are outside the administration of this Chapter 11 case and that 17 C.F.R. Part 190 does not apply to administration of the Debtors' estates.³ However, nothing could be further from the truth.

I.

SEGREGATED ACCOUNT CLAIMS HAVE PRIORITY OVER OTHER CLAIMANTS

The law charges the Debtor with FCM responsibility in respect of the missing segregated-account funds of MF Global's commodities customers. The segregated-account customers of MFGI have super-priority rights as creditors pursuant to 17 C.F.R. § 190.08(a)(1)(ii)(J) and 11 U.S.C. § 766.

Under 17 C.F.R §190.08, "customer property" includes, *inter alia*, "cash, securities or other property . . . received, acquired or held to margin, guarantee, secure, purchase or sell a commodity contract," any "open commodity contracts," and even cash, securities or property that "[w]as unlawfully converted but is part of the debtor's estate."

Here, it cannot be gainsaid that we deal with a situation in which a parent corporation, the Debtor, utilized its control of a subsidiary now-in-liquidation, MFGI a registered FCM that conducted FCM business, to strip from the subsidiary's commodities customers' segregated accounts massive sums. MFGI's Liquidation Trustee has estimated the diverted commodities' customers' segregated-account funds as being at least \$600 million and up to \$1.2 billion or more.

³ It will not surprise us if others, such as banks intimately involved in MF Global's business and/or in transactions involving the segregated account funds similarly take the position that the commodities customers should not have senior claims in the Debtors' estates. Self-interest and avarice are powerful forces, even in the face of injustice and inequity.

For at least three independent reasons, the bankruptcy protections accorded to commodities customers' segregated accounts apply to the administration of these Debtors' estates.

One: Federal law establishes the regulatory regime for FCMs and for Chapter 11 and other bankruptcy-related proceedings. The United States Supreme Court has held it to be a fundamental principle of federal law that for federal liability purposes, including subjecting a parent corporation to federal regulations applicable to a subsidiary, "that the corporate veil may be pierced and the shareholder held liable for the corporation's conduct when, *inter alia*, the corporate form would otherwise be misused to accomplish certain wrongful purposes, most notably fraud, on the shareholder's [parent corporation's] behalf." *United States v. Bestfoods*, 524 U.S. 51, 62, 118 S.Ct. 1876, 1885 (1998).

Two: Section 2(a)(1)(b) of the Commodity Exchange Act, 7 U.S.C. § 2(a)(1)(b), subjects the Debtor Holdings to the CFTC regulations. It states that: "The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person." Therefore, Holdings is, for the purposes of the Act and the CFTC's regulations thereunder, the "person" charged with compliance with all of the Act's requirements. Those requirements include 17 C.F.R. § 190.

Three: No later than the moment when the parent-Debtor began accessing the funds in the commodities customers' segregated accounts of MF Global, the parent-Debtor itself became a *de facto* FCM. In short, Debtor Holdings was by then running the FCM business and doing so

for its benefit. Even prior to Dodd Frank, the CFTC has broadly construed the definition of FCM-related activities.

Indeed, the corporate parent (Debtor Holdings) was “accept[ing]” money that FCM customers had deposited “to margin, secured, or guarantee any trades or contracts,” which the parent-Holdings used in futures activities. See Commodity Exchange Act § 1a(28)(A)(i)(II), 7 U.S.C. § 1a(28)(A)(i)(II)⁴. Whether the directors, officers, employees and/or agents of the MFGI subsidiary were actively complicit in this activity of the Debtor Holdings or passively stepped aside and allowed the domineering parent-Debtor to access the segregated-account funds and use them in its futures activities, the Debtor became a *de facto* FCM the moment it accessed segregated-account funds.

Accordingly, the Debtor’s Chapter 11 case must be administered consistent 17 C.F.R. § 190.08(a)(1)(ii)(J) and in consonance with 11 U.S.C. § 766(h), with the commodities customers having segregated accounts being treated as a customer class of the Debtors. That means that so-called “MFGI”’s segregated-account customers shall be entitled to receive payment out of the Debtors’ estate of 100% of those customers’ segregated-account funds on a first priority basis, ahead of all creditors, secured and unsecured.

We realize that it is possible that the Debtor, MFGI and/or others may object to this motion by arguing, in words or substance, that the facts pertaining to the missing segregated-account funds and how they came to be missing are not yet fully known and that the relief requested should not be granted, for example, on the ground sufficient evidence has not been adduced as to the facts of when, where and how the Debtor accessed and disposed of the missing commodities customers’ segregated account funds. We respectfully submit that any such

⁴ The Dodd-Frank Act recently amended and renumbered the definition of an FCM in the CEA from Section 1a(20) to Section 1a(28).

argument would be insufficient to deny this motion and that giving credence to such an objection would be unjust. This is because, among other things, the public revelation that on or about October 31, 2011, the Debtor and/or its non-debtor subsidiaries and affiliates notified the SEC and CFTC of a shortfall in segregated-account funds and the statements of the SIPA Liquidation Trustee that \$600 million up to \$1.2 billion or more of customer-funds is missing are themselves sufficient to provide the legal framework for administration of claims against the Debtor's estate. (In classic, common law terms, this is at least a *res ipsa loquitur* situation.)

If there is a shortage of further details, it unfortunately exists only because the Debtor, its representatives, MFGI and the SIPA Liquidation Trustee have not openly communicated the factual developments so that they are of-record in this Court. Moreover, the Trustee has not responded to several written and email requests made by Sapere's attorneys discuss shortfall in customers' segregated accounts. Any dearth of of-record factual detail is solely attributable to Debtors' efforts to obviate the existence of a clear and accurate factual record in this matter.

That circumstance is not the fault of the movants or the commodities customers who had segregated accounts at MFGI. Nor should the withholding by the Debtors of information result in administration of the Debtors' estate such that its Liquidity Facility Lenders or other creditors of the Debtor or others obtain priority rights over the commodities customers with segregated accounts through Cash Collateral, Cash Management or other orders; nor should the processes for administration of the Debtors' estate fail to include in the Chapter 11 case itself the requisite protections of the rights of the commodities customers whose are not receiving 100% of their segregated accounts, which are missing or otherwise undistributed to them, because of the need of trustees and others to investigate what the Debtor did and caused to be done with those funds.

II.

ALTERNATIVELY, RULE 2004 EXAMINATIONS SHOULD BE ORDERED AND THE DEBTORS' ESTATES ADMINISTERED CONSONANT WITH 17 C.F.R. § 190 PENDING DEVELOPMENT OF FURTHER EVIDENCE OF THE RELEVANT FACTS

Nevertheless, in anticipation of the possibility of objections asserting in words of substance the insufficiency of evidence presently to support the relief being requested, Movants, as an alternative, also request that the Court order that movants may conduct Fed. Bankr. R. 2004 examinations of any party in interest relating to the relevant facts.

The Rule 2004 examinations would cover: the existence, amount and/or disposition of commodities customers' segregated account funds at MFGI (including without limitation access, dominion and/or control over the same by or for the benefit of any of the Debtors and/or any other non-debtor subsidiary or affiliate of the Debtors); and/or the circumstances under which any such funds became missing and/or have not been 100% transferred post-petition to commodities customers owning those segregated accounts; and/or the existence, description, nature, custody, condition and location of any documents or other tangible things and the identity and location of persons who know of any matter relevant to the subject matter of this motion.

The 2004 examinations will include matters from the date one year prior to the filing of the Debtor's petition and SIPC's SIPA liquidation action against MFGI. The 2004 examinations will include examinations of the Debtors; MFGI; the Debtors' and their non-debtor subsidiaries' and affiliates' present and former employees and representatives identified as being involved in such circumstances; witnesses potentially knowledgeable about any such circumstances; the banks and correspondents of the Debtors and their non-debtor subsidiaries and affiliates who received funds that may have originated from commodities customers' segregated accounts; the

trustees and their representatives involved in investigating the missing segregated account funds; and other persons. The 2004 examinations will include the production of documentary evidence.

Movants further request that, pending the completion of the 2004 examinations and the opportunity to provide further submissions to the Court and for the Court to hear and determine the issues based on the resulting evidence, the Court order that the Debtors and their non-debtor subsidiaries and affiliates and the trustees and their representatives conduct the Chapter 11 case and/or the SIPA liquidation such that the commodities customers who have not received 100% of their segregated accounts shall be treated no less favorably than they would be treated were the Debtors' estate administered consistent with 11 U.S.C. §§ 761-767 and 17 C.F.R. § 190 being applicable to the Debtors' estate.

CONCLUSION

For the foregoing reasons, the Court should enter an order directing the Debtors-in-Possession, their non-debtor subsidiaries and affiliates and the bankruptcy Trustee to administer the Debtors' estates pursuant to 11 U.S.C. §§ 761-767 and 17 C.F.R. § 190.

Alternatively, the Court should order Rule 2004 examinations as heretofore requested, hold this motion in abeyance pending the completion thereof, and order that the Debtors and their non-debtors subsidiaries and affiliates and the trustees and their representatives in the interim conduct the Chapter 11 case and the SIPA liquidation such that the commodities customers who have not received 100% of their segregated accounts shall be treated no less favorably than they would be treated were the Debtors' estate administered consistent with 11 U.S.C. §§ 761-767 and 17 C.F.R. § 190.

The Court should also grant such other and further relief as is just and proper.

Dated: December 5, 2011
New York, New York

Respectfully submitted,

**FORD MARRIN ESPOSITO WITMEYER
& GLESER, L.L.P.**

By: /s/ John J. Witmeyer III
John J. Witmeyer III (JW 7442)
Jon R. Grabowski (JG 9845)
Stephen R. Chuk (SC 8109)
Ford Marrin Esposito Witmeyer & Gleser, L.L.P.
Wall Street Plaza
New York, New York 10005
Tel: (212) 269-4900
Fax: (212) 344-4294
Email: jjwitmeyer@fmew.com
jgrabowski@fmew.com
srchuk@fmew.com

-and-

**HOWARD, STALLINGS, FROM
& HUTSON, P.A.**

Joseph H. Stallings (JS 5065)
5410 Trinity Road, Suite 210 (27607)
P.O. Box 12347
Raleigh, North Carolina 27605
Tel: 919-821-7700
Fax: 919-821-7703
Email: jstallings@hsfh.com

*Attorneys for Sapere Wealth Management, LLC
Granite Asset Management,
and Sapere CTA Fund L.P.*

EXHIBIT A

The New York Times

DealB%k

Edited by Andrew Ross Sorkin

NOVEMBER 29, 2011, 9:00 PM

Details Emerge on MF Global's Last-Ditch Effort to Fill Shortfall

By *BEN PROTESS* and *MICHAEL J. DE LA MERCED*

After MF Global discovered a nearly \$1 billion shortfall in customer money in the early hours of Oct. 31, the brokerage firm lined up a last-ditch — but ultimately unsuccessful — effort to fill the hole, according to people briefed on the matter.

David Goldman for The New York Times
Jon S. Corzine on the trading floor of MF Global last year.

At the time, the revelation of missing money was about to scuttle a last-minute deal to sell part of MF Global to another brokerage firm. MF Global executives scrambled to assemble money from a variety of sources, including its own accounts at banks and clearinghouses, said these people, who requested anonymity because investigations into the matter were incomplete.

The firm was ready to proceed with the wire transfers, but was forced to abort at the last second. Hours later, MF Global filed for bankruptcy protection. And within days, Jon S. Corzine, the former New Jersey governor, had resigned as the firm's chief executive.

Details surrounding the failed transfers are spotty, though investigators have since criticized the poor condition of MF Global's books, which may have presented an incorrect picture of how much money the firm had at the time.

It is possible that MF Global lacked the necessary money to complete the transfers. In other cases, the firm's banks, including JPMorgan Chase, may have needed additional time to verify its account balances.

Part of the reason that MF Global's records were in disarray was a flurry of asset sales that the firm made in its last week in a frenzied effort to raise money.

What caused the initial shortfall remains the subject of wide-ranging investigations by regulators and the Justice Department. Even the precise amount that is missing has caused some dispute, with estimates ranging from about \$600 million to more than \$1.2 billion.

What is clear to investigators is that MF Global improperly used customer funds for its own needs during its final chaotic days, according to people with knowledge of the inquiries. That move essentially breached a fundamental Wall Street rule: customer money must remain separate from company cash.

Neither MF Global nor Mr. Corzine has been accused of any wrongdoing.

About \$200 million in customer money that disappeared from MF Global surfaced at one point at JPMorgan in Britain during that last week, the people with knowledge of the inquiries have said.

That discovery could prove to be a major breakthrough in the weeks-long search for the missing funds, though hundreds of millions of dollars in customer money remains unaccounted for.

MF Global sent the \$200 million to JPMorgan, some people close to the investigations believe, after it overdrew an account at the bank. JPMorgan raised questions about the money, but it never received assurances from MF Global.

It is possible that JPMorgan no longer holds the money, having served only as a middleman between MF Global and several trading partners.

Copyright 2011 The New York Times Company | Privacy Policy | NYTimes.com 620 Eighth Avenue New York, NY 10018

Monday, December 5th 09:40 PM IST

MF Global mixed client funds, transferred abroad: Report

Dec 3, 2011

Regulators investigating the collapse of MF Global have determined that the firm combined money between securities and futures accounts owned by customers, and transferred funds outside the country to at least one entity, a source said on Friday.

“The further we get into (the investigation) the more complex it is ... but we’re making progress,” the source said, adding that the commingling and transferring of money is making it harder for regulators to determine what money belongs where.

Congress has already started asking questions. Reuters

MF Global took futures segregated money and put it into the account for customer securities, essentially mixing futures and securities that were both owned by customers, said an official familiar with the matter.

Until now, it was believed that only customer futures accounts were affected.

The source also told Reuters that MF Global had been using customer funds for “several days if not weeks” rather than just a few days before the firm collapsed.

Regulators had previously thought the firm was using customer funds on the Thursday and Friday before it filed for bankruptcy on 31 October.

CME Group, the Chicago exchange where MF Global traded, said it had reviewed the company’s books a week before the bankruptcy and found no issues with the customer money.

If MF Global started improperly dipping into its customers’ accounts long before the firm’s collapse, the allegation would raise questions of why the regulators and auditors failed to spot such behavior.

Congress has already started asking questions about potential lapses in regulatory oversight of MF Global.

The pressure on regulators would only increase if MF Global turns out to have misused customer funds over an extended period of time.

“Establishing the specifics of what happened is key to figuring out how the system failed and how to fix it going forward,” Republican Senator Chuck Grassley of Iowa said in a statement on Thursday. “Congress will need to keep drilling down.”

<http://www.firstpost.com/business/mf-global-mixed-funds-transferred-abroad-report-147291.html>

MF Global collapsed in late October after the firm was forced to reveal that it had made a \$6.3 billion bet on European sovereign debt.

An effort to sell the firm failed, partially due to the revelation that hundreds of millions of dollars in customer money were not where they should have been.

Investigators such as the Commodity Futures Trading Commission have been scouring the company's books, described as messy and unorganized, for the fund shortfall that has been estimated as much as \$1.2 billion by the liquidating trustee.

However, regulators have been at odds with the trustee, believing that figure is too high.

PTI

The New York Times
Reprints

This copy is for your personal, noncommercial use only. You can order presentation-ready copies for distribution to your colleagues, clients or customers here or use the "Reprints" tool that appears next to any article. Visit www.nytreprints.com for samples and additional information. Order a reprint of this article now.

From
ALEXANDER PAYNE
Director of
SIDEWAYS

November 25, 2011

In Commodities World, Safe and Secure Sometimes Isn't

By **PAUL SULLIVAN**

THE scariest thing about MF Global's bankruptcy four weeks ago is not that a venerable firm led by a former Goldman Sachs chief executive and New Jersey governor collapsed. It is that MF Global's customers have not yet gotten all their money back. And with the report this week from the court-appointed trustee that as much as \$1.2 billion appears to be missing, many customers are worried that they'll ever see that money again.

It wasn't supposed to work that way. Commodities firms are required to keep clients' money separate from the firm's capital.

In the commodities world, these segregated accounts had been seen as stronger than the deposit insurance offered by banks that are members of the Federal Deposit Insurance Corporation and the protection on securities, like stocks and bonds, given by the Securities Investor Protection Corporation.

But regulators suspect that MF Global did not keep its clients' money separate in its chaotic waning days, using some customers' money, they believe, to meet its own obligations. And if the firm violated the rule requiring segregated accounts, investors say they are now concerned about the viability of commodities trading as it has been conducted in the United States for more than a century.

"If they're not going to uphold segregated funds, this can happen again tomorrow to anyone," said Paula Pierce, a commodities lawyer in Virginia. "The question is whether anyone is going to do anything about it."

R. David Gary, a spokesman for the Commodity Futures Trading Commission, which was MF Global's main regulator, said the commission planned to review the rule governing segregated accounts at a meeting on Dec. 5. Michael Shore, a spokesman for the CME Group, which owns the main exchanges where MF Global traded, said: "It's important to

understand this was an unprecedented situation for our industry and that the shortfall in total customer segregated funds occurred at the firm level, not at the clearinghouse level.”

The regulators attribute some of the delay in returning clients' money to what the court-appointed trustee has described as sloppy bookkeeping at MF Global, which has made it difficult to find what is left and where it is. But lawyers representing clients who have lost access to their money do not accept this argument. They say that segregated accounts are sacrosanct and that the money in them should have been immediately returned to their clients.

“It hasn't worked out well for anyone yet, even the people who had positions move over early on,” said Timothy Butler, a partner at Tibbetts Keating & Butler in Darien, Conn., who represents 10 clients with accounts ranging from \$6,000 to several million dollars. “I had one person who got no margin transferred and was virtually wiped out. He had a \$250,000 gold position, and he only got back \$50,000 after it was liquidated.”

Nor are the issues raised by the MF Global bankruptcy simply about the safety and security of money in segregated accounts at commodities brokerage houses. They also raise questions about the safety of investments at other types of firms.

ARE YOU PROTECTED? Just because there is protection in place does not mean you will have access to your money quickly — or that anyone will care if this poses a hardship.

Jerome Beazley, president of TimeTech Capital Management, a commodities trading adviser in Esmont, Va., had all of his clients' money with MF Global. He may eventually get his clients' money back, but until then he is out of business.

He declined to give the exact amount at issue but said he had put it all into cash a few weeks before MF Global collapsed. But because only money backing open futures positions has been transferred so far, he has no access to the money.

He said he was upset that the trustee did not immediately move the commodities accounts to another firm, as happened when other clearinghouses he used went bankrupt. “There is a wall between the creditors and the segregated funds,” he said. “That's like vault money. When you touch it, you've destroyed the credibility of Wall Street.”

Jack Lucentini, a science writer, has also been hurt by what he considered a safe play — having extra cash in his MF Global account. “I had this obsession with never having to get a margin call,” he said. “I thought I'd be able to sleep like a baby by having so much money in there.”

When the firm collapsed, he received about \$12,000 of the \$214,000 he had at MF Global. Even then, he had to put up an additional \$7,000 to support his existing trades at the new firm. He hopes to get 60 percent of his money in early December, when the trustee said he would release some of the cash. Similar risks exist for investors who held cash in securities accounts. SIPC offers protection up to \$500,000 for securities accounts, but it covers only \$250,000 in cash, said Stephen Harbeck, president and chief executive.

Those who had money in MF Global's securities accounts have not gotten it back. There are 400 securities accounts on top of the 38,000 commodities accounts. But after a month, they are still in limbo. "The trustee is still working on that," Mr. Harbeck said. "We hope to get them to another broker."

But there is no deadline for this, and account holders should not expect to collect money from SIPC any time soon. "If there is no viable account transfer, we'd reluctantly have to satisfy claims," Mr. Harbeck said. "The protection would kick in at that time."

Andrew Stoltmann, a securities lawyer in Chicago, said clients typically waited a long time to have any money returned to them. While some \$92 billion at Lehman Brothers was moved in about a week to Barclays when the firm collapsed, Mr. Stoltmann said this was the exception. It took a decade for clients of Stratton Oakmont, a stock manipulator on Long Island, to receive any money back.

"There were thousands of investors who had lost tens of millions of dollars, and they thought they were protected," he said. SIPC "said the majority of their losses were investment-related — in artificially inflated stocks. Arguably, they were correct, but the perception for the public was that SIPC would cover it."

WHAT IS YOUR RECOURSE? There are always legal options but they will be costly and time-consuming. One common strategy is to sue the firm or person who introduced you to the brokerage firm that collapsed.

Mr. Lucentini said he was filing suit against Charles Schwab for introducing him to MF Global and for not transferring his money out quickly enough. Mr. Butler said he was bringing lawsuits against Schwab and E*Trade for the same reason.

"I have clients telling me that Schwab was the introducing broker, and they made arrangements to do transfers out and Schwab was slow to make the transfers," Mr. Butler said.

Schwab contends that MF Global was a reputable firm when it recommended it to clients. "We made it clear that it was a separate company, that we did not provide futures trading," said Greg Gable, a spokesman for Schwab. "We warned of the risks inherent in futures trading."

Jaime Stein, a spokesperson for E*Trade, said: "This matter is currently in the hands of the bankruptcy trustee. We have retained outside counsel to assist us in advocating for the release of our customers' remaining accounts and funds."

WHERE IS IT SAFE? Mr. Stoltmann said he used to tell clients who were concerned about the safety of their money to use large firms like Bear Stearns and Lehman Brothers. While the accounts of most clients of those now-defunct brokerage houses were transferred to other firms, the process was not without stress.

Now he recommends extensive due diligence on every firm. "Post-2008, I don't think any firms are fail-safe," he said. "Certainly going with a Morgan Stanley, Merrill Lynch or a Goldman Sachs is a far better alternative than going with a firm you've never heard of."

Even then, Ken Kamen, president of Mercadien Asset Management, said investors could take unintended risks by using leverage, or margin, in their accounts. "Anytime something is not fully paid for, you're giving someone the right to attach collateral to it," he said. "You should be on the lookout if a brokerage firm automatically signs you up for a margin account."

As to commodities accounts, some MF Global clients now regret keeping more than the minimum amount of margin at the brokerage. Mr. Lucentini is one. "I should have kept it at a bank or under my mattress and sent money in when necessary," he said.

While he and others may eventually get their money back, the lesson here is an old one: don't put all your eggs in one basket.

MF Global Admitted Using Client Money As Troubles Mounted: Official

DANIEL WAGNER and TOM HAYS 11/ 1/11 06:01 PM ET Associated Press ^{AP}

WASHINGTON — MF Global, the securities firm led by Jon Corzine, admitted using clients' money as its financial troubles mounted, a federal official says. The FBI is expected to investigate whether the firm's actions violated criminal laws, according to two people familiar with the situation.

An MF Global executive told regulators early Monday that the company had diverted client money, according to an official familiar with a separate probe by regulators. It isn't clear where the money ended up or what it might have been used for, the official said.

All three people spoke on condition of anonymity because they weren't authorized to discuss the matter publicly.

MF Global filed for bankruptcy protection Monday, after a big bet on European debt threatened to topple it. It became the first big Wall Street casualty of the European debt crisis.

And it's the latest public embarrassment for Corzine.

He was ousted as chairman of Goldman Sachs Group Inc. in 1999 by executives including Henry Paulson, who later became Treasury secretary. Later, he lost his bid for a second term as New Jersey governor after sinking millions of his own money into the campaign. Frustrated voters had hoped his banking experience would help him clean up the state's finances.

MF Global was seen as Corzine's shot at redemption on Wall Street. He hoped to turn it into a major investment bank and restore his stature in the financial world.

After taking over MF Global last year, Corzine led MF Global to make more trades for the company's own profits, a practice known as proprietary trading. Proprietary trading helped turn Goldman into a trading powerhouse in recent years.

Under Corzine's leadership, MF Global bet \$6.3 billion on debt issued by Italy, Spain and other European nations with troubled economies. Those bonds have lost value in recent weeks as fears have intensified that some European countries might default.

Regulators said in September that MF Global was overvaluing some of its European debt investments. It required the company to raise more cash, according to court papers filed on Monday.

MF Global reported its biggest ever quarterly loss last week, mainly because of losses on proprietary trading. Credit rating agencies downgraded the company's bonds to junk status. And

http://www.huffingtonpost.com/2011/11/01/mf-global-admitted-using-client-money_n_1069757.html

business partners demanded that it put up more cash to guarantee its trades. The result was a cash crunch that forced MF Global into bankruptcy court.

The European debt crisis has roiled financial markets for months. Greece can't afford to pay its debts without outside help. European leaders have been wrangling over the details of bailouts for Greece, Ireland and Portugal.

Europe's debt problems threaten the financial system because European banks hold billions in debt issued by Greece and other troubled countries. Losses on those bonds could topple the biggest European banks. MF Global's failure highlights that threat on a smaller scale.

The regulators' investigation of MF Global Holdings Ltd. is preliminary. A formal investigation by the company's main regulator, the Commodity Futures Trading Commission, requires a vote by its five commissioners.

At a first-day hearing on MF Global's bankruptcy, a lawyer for the company denied that executives were aware of any money missing from client accounts.

"To the best knowledge of the management, there are no shortfalls. All funds can be accounted for," said Ken Ziman, a lawyer with Skadden, Arps, Slate, Meagher & Flom LLP. Ziman said some funds have not yet been cleared by trading partners and exchanges.

Earlier Tuesday, the head of the Chicago Mercantile Exchange said that MF Global had violated rules requiring it to keep clients' money in separate accounts.

Securities firms are required to keep clients' money and company money in separate accounts. That makes it easier to repay clients if a broker fails.

Craig Donohue, CEO of CME Group Inc., which operates exchanges where derivatives are traded, said MF Global was "not in compliance" with requirements set by CME and the CFTC. He said they are still trying to "determine the precise scope of the firm's violation at this time."

Derivatives are investments whose value is based on the value of some underlying asset. MF Global was one of the biggest players in the derivatives market.

CME Group is involved in the investigation because it regulates companies that trade on its exchanges. Government regulators empower companies that run exchanges to enforce trading rules. When serious violations are alleged, these companies and regulators both investigate.

MF Global and Corzine did not respond to requests for comment. Interactive Brokers, which was considering buying MF Global until the problems came to light, declined to comment. The FBI also declined to comment.

The Securities and Exchange Commission and the CFTC have said they and other regulators were monitoring MF Global's situation for days "in anticipation of a transaction that would include the transfer of customer accounts to another firm."

The regulators said MF Global had reported "possible deficiencies" in client accounts, but they did not reveal that the company had diverted client money.

The proposed sale through after regulators and the potential buyer, Interactive Brokers, couldn't make the numbers add up. The discrepancies led to MF Global's admission at 2 a.m. Monday, the official said.

Trading of MF Global shares was permanently suspended on the New York Stock Exchange Tuesday afternoon.

Hays reported from New York. Associated Press writer Larry Neumeister and AP Business Writer Pallavi Gogoi in New York contributed to this report.

The New York Times
DealB%k

Edited by Andrew Ross Sorkin

NOVEMBER 8, 2011, 3:26 PM

A Board Complicit in MF Global's Bets, and Its Demise

By *STEVEN M. DAVIDOFF*

The easy explanation for MF Global's downfall is that it was Harry Campbell killed by Jon S. Corzine's risky trading bets. Yet MF Global was torpedoed not only by Mr. Corzine but by its board.

The board at MF Global is highly sophisticated and experienced. It includes two former senior executives from HSBC, the former chief financial officer of the Aon Corporation and a top member of the private equity firm J. C. Flowers & Company.

Under this board's watch, MF Global invested in European sovereign debt using short-term financing. When ratings agencies and investors became spooked by the European debt exposure, the financing dried up and a classic run on the bank soon ensued. Bankruptcy followed.

On paper, these highly qualified directors should have realized that Mr. Corzine and MF Global were taking undue risks. After all, it was short-term financing that brought down Lehman Brothers and Bear Stearns. There is even a board member who appears to specialize in this type of financing and risk management: Robert S. Sloan, a managing partner of a company that focuses on in global collateral management and counterparty risk management

This is also not a case of willful blindness. The board appears to have been thoroughly aware of these trades and discussed them. The existence of these trades was also disclosed by MF Global in its public filings, though perhaps not thoroughly. By the available indications, MF Global directors approved these trades.

The question is, why? How could this experienced board have been so foolish, particularly when several directors appear to have expertise on this matter?

There is some thought that the MF Global board failed to stop these trades because it was in awe of Mr. Corzine and his Goldman Sachs pedigree. The "Corzine as Wizard of Oz" argument, however, seems too glib given the sophistication of the board. These directors were simply too experienced to be fooled by Mr. Corzine or to be lulled into blind obedience.

A better explanation may be that boards are inherently unable to do the job we want of them: to oversee the company and counteract the influence of its chief executive.

Directors are part-time members of a corporation. The ability of even the most sophisticated directors to understand the business better than management is unlikely.

The result is that when a chief executive says that a course of action is the right one to take, directors are highly unlikely to challenge this action because they too believe it. Directors want to get along and move the company forward. These dynamics are incredibly powerful and can take hold for even the most sophisticated boards.

Many recent books and articles about the financial crisis and Bear Stearns, Merrill Lynch, Lehman and the American International Group portray boards that were not particularly good at supervising risk at their companies. Instead traders and executives were given free rein to take tremendously risky bets that brought the house down.

If MF Global is different, it is because the board appears to have been very involved in the trades. In the other cases, it appears that the boards had little clue about the risks. In other words, the directors of MF Global were engaged and knew of these risks. They were not duped by Mr. Corzine or anyone else. But they lacked the ability or desire to really challenge him. Not because he was from Goldman's cloth, but because he was management.

MF Global even promoted its risk management in its filings, stating that its approach to risk "involves a strong governance structure that clearly defines responsibilities, delegated authorities for risk control as well as risk-taking and documented policies designed to identify, measure, control and mitigate risk."

This disclosure establishes that the board had ultimate responsibility for the firm's risk management. Yet, the collapse of MF Global shows that boards are too often unable to deal with risk even when they are aware of it.

So what can we do about this?

Perhaps it is time to recognize that it is not just boards, but the investing culture that needs to change. A place like MF Global, where one person can make such a significant decision, is bound to explode.

But while individual decisions need to be checked, asking boards to do this work appears to be foolhardy. They just lack the skills, the depth and are not there on a day-to-day basis.

Boards instead need to take responsibility to create a culture that serves to check risk effectively. The MF Global board appears to have failed at this task. What now appears to be a blindingly obvious failure of risk management should have been caught before it even got to the board. By the time the board was deciding on the validity of these trades, it was already over — months before the actual collapse.

If we are going to get boards to take even this responsibility, we need to get serious about accountability.

I think it is also questionable whether a more rigorous compensation scheme would have deterred Mr. Corzine. He appeared to have the self-confidence of the gods, a quality not unknown among Goldman traders. Goldman at least recognizes the potential for such hubris and has in place strong risk management.

This doesn't mean that executives shouldn't forfeit compensation when they blow up their company. We also need accountability at the board level. If the board members were to be penalized for their failures through forfeiture of their own compensation, perhaps directors would have focused on creating a stronger risk management culture, one that appears absent at MF Global.

In the absence of accountability, there needs to be regulation that recognizes that boards cannot stop undue risk. Regulators need to create a system and culture that forestalls it.

Above all, we need to ask hard questions about why boards have repeatedly failed to prevent the implosion of their financial institutions. Otherwise, we will waste another crisis.

Steven M. Davidoff, writing as The Deal Professor, is a commentator for DealBook on the world of mergers and acquisitions.

Corzine-run firm admits using clients' money

Recommend 163

65

2

Below: Video Discuss Data Related

Almost \$700 million missing after big bets on European debt go sour

msnbc.com staff and news service reports
updated 11/1/2011 7:49:23 PM ET

NEW YORK — MF Global, the securities firm led by former Goldman Sachs chief and former New Jersey Gov. Jon Corzine, has admitted to using clients' money as its financial troubles mounted, a federal official said Tuesday.

An MF Global executive made the admission to federal regulators in a phone call early Monday after regulators discovered money missing from clients' accounts, The Associated Press reported, citing an official familiar with the conversation.

The official spoke on condition of anonymity because he was not authorized to discuss a preliminary investigation by federal regulators.

Government rules require securities firms to keep clients' money and company money in separate accounts. Violating the rule could result in civil penalties.

MF Global, which filed for bankruptcy protection Monday, faced a cash crunch after making multibillion-dollar bets on European sovereign debt.

Hundreds of millions of dollars of customer's money have gone missing from the brokerage firm, sources told The New York Times.

The discovery of the missing millions stopped a last-minute deal to sell a major part of MF Global to another brokerage firm from going ahead, The New York Times reported.

The company's main exchange regulator, CME, said earlier Tuesday that MF did not separate its customers' accounts from the firm's funds as required by law, Reuters reported.

MF Global files for bankruptcy protection

"CME has determined MF Global is not in compliance with Commodity Futures Trading Commission and CME customer segregation requirements," CME Group Inc Chief Executive Craig Donohue said. Futures brokers must keep customer accounts separate from each other and from the firm's own money.

Donohue said CME is looking into exactly what happened at MF Global.

Corzine, 64, who ran Goldman Sachs before becoming a U.S. senator and then governor of New Jersey, had been trying to turn MF Global into a mini-Goldman by taking on more risky trades.

But once regulators forced it to fully disclose its bets on debt issued by countries including Italy, Portugal and Spain, the company's business rapidly unraveled with no buyers willing to step in.

The fall of the group sent shockwaves through commodities markets as traders feared the damage could spread, or similar problems could occur with other players.

Reuters reported that MF was allowed to resume liquidating customers' positions on major U.S. futures exchanges, which may provide a little relief for some of its clients.

MF Global's meltdown in less than a week made it the biggest U.S. casualty of Europe's debt crisis, and the seventh-largest bankruptcy by assets in U.S. history. It was a stunning fall for a firm that can trace its heritage back 230 years to the founding of many of the world's commodity exchanges.

The Times, citing "people briefed on the matter," said it was initially thought some \$950 million was missing, but this figure has dropped to under \$700 million.

No accusation of wrongdoing

The paper said that MF Global and Corzine had not been accused of doing anything wrong.

MF Global's shares plunged last week as its credit ratings were cut to junk.

The Chapter 11 bankruptcy filing came after talks to sell a variety of assets to Interactive Brokers Group Inc. broke down earlier Monday, a person familiar with the matter said.

KPMG, appointed as administrators to MF Global's UK arm, said it had been busy closing out positions all day under a new UK regime set up to prevent a repeat of the slow and painful work-out of the 2008 collapse of Lehman Bros.

"It's still a large number. It's still billions," Richard Fleming, KPMG's head of restructuring, told Reuters. "We'll know a lot more at the end of the day," he said.

Fleming said he was confident clients would see their money again: "Our strategy this morning has been ... where we have clients whose position is reconciled, and are due funds, then that money will flow," he said.

MF Global officials have not responded to requests for comment.

'Grave concerns'

Regulators had expressed "grave concerns" about the viability of MF Global, which filed for bankruptcy only after "no viable alternative was available in the limited time leading up to the regulators' deadline," the company's chief operating officer, Bradley Abelow, said in a court filing. Late Tuesday NBC New York reported the FBI had joined in an investigation of the matter.

One of the regulators that pressed MF Global, the CFTC, was unhappy with the brokerage's failure to give it the required data and records.

"(To) date we don't have the information that we should have," said a source close to the CFTC.

In the end, regulators and markets reacted swiftly to MF Global's troubles, which may have been exacerbated by Corzine's affinity for risk-taking over the course of a career that took him to the top echelons of Wall Street and then into politics.

"They went for what would be a very profitable trade with European sovereign debt that obviously has blown up in their face, and brought the company down," said Dave Westhouse, vice president of Chicago retail broker PTI Securities and Futures.

The Associated Press and Reuters contributed to this report.

23

2

Recommend

163 people recommend this. Be the first of your friends.

65