

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)

**IN THE MATTER OF THE BANKRUPTCY OF  
MF GLOBAL CANADA CO.,  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**MOTION RECORD**  
(returnable February 3, 2012)

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in bankruptcy of MF Global Canada Co.

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**IN THE MATTER OF THE BANKRUPTCY OF  
MF GLOBAL CANADA CO.,  
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# **TAB 1**

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)

**IN THE MATTER OF THE BANKRUPTCY OF  
MF GLOBAL CANADA CO.,  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**NOTICE OF MOTION**  
(re MF Global Inc. Net Equity Claim)

**KPMG Inc.**, in its capacity as trustee in bankruptcy (the "Trustee") of MF Global Canada Co. ("**MF Global Canada**") will make a motion before a judge presiding over the Commercial List on a date to be fixed at a scheduling hearing on Friday, February 3, 2012 at 9:30 o'clock a.m. or soon thereafter as the motion can be heard at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:**

The motion is to be heard orally.

**THE MOTION IS FOR:**

1. an order substantially in the form of order attached as Schedule "A" hereto<sup>1</sup> which provides for, among other things, a declaration that:
  - (a) MF Global Inc. is a "customer" of MF Global Canada, as that term is defined in section 253 of the *Bankruptcy and Insolvency Act* (the "BIA");
  - (b) the securities, options, commodities and commodity futures contracts held by MF Global Canada for the account of MF Global Inc. in the Canadian Omnibus Account are not "customer name securities", as that term is defined in section 253 of the BIA;

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Fifth Report of the Trustee dated January 31, 2012 and filed with the Court in connection with this motion.

- (c) the cash, securities, options, commodities and commodity futures contracts and other assets held by MF Global Canada for the account of MF Global Inc. in the Canadian Omnibus Account have vested in the Trustee pursuant to section 261(1) of the BIA and are properly allocated to the “customer pool fund” of MF Global Canada pursuant to section 261(2) of the BIA;
- (d) the net equity of MF Global Inc. with respect to any and all claims of MF Global Inc. against MF Global Canada arising out of or relating to the Canadian Omnibus Account (the “**MF Global Inc. Net Equity Claim**”) is:

<b>Net Equity Canadian</b>	<b>102,417,201.90 – 54,474,864.08 = 47,942,237.82</b>
	<b><u>or</u></b>
<b>Net Equity USD</b>	<b>100,631,945.66 – 53,527,428.59 = 47,108,517.07</b>

- (e) each of the SIPA Trustee and the Trustee shall have a period of 60 days from the date of a final order determining the MF Global Inc. Net Equity Claim to jointly reconcile the amount of each of the Collateral Recorded in the U.S. Omnibus Account and the Collateral Recorded in the Canadian Omnibus Account;
- (f) in the event that the SIPA Trustee and the Trustee are not able to jointly reconcile either the amount of the Collateral Recorded in the U.S. Omnibus Account and the Collateral Recorded in the Canadian Omnibus Account, such unreconciled amount shall be determined by the Ontario Superior Court of Justice (In Bankruptcy and Insolvency) (the “**Court**”) in accordance with a motion for directions by the Trustee to the Court to be conducted pursuant to a process (including as to timetable) to be agreed to between the SIPA Trustee and the Trustee or as directed by the Court;
- (g) the Trustee is entitled to assert all of the rights given to MF Global Canada pursuant to the Canadian Omnibus Agreement and at law relating to the Canadian Omnibus Account;

- (h) in the alternative to paragraphs (b) – (f), above, in the event that the securities, options, commodities and commodity futures contracts held by MF Global Canada for the account of MF Global Inc. in the Canadian Omnibus Account are “customer name securities”, as that term is defined in section 253 of the BIA, a declaration that MF Global Inc. is indebted to MF Global Canada in the amount of \$53,527,428.59 USD (\$54,474,864.08 CAD) (the “**MF Global Indebtedness**”) and that the MF Global Indebtedness must be discharged in full prior to the release of any such customer name securities in accordance with section 263 of the BIA;
- (i) the Fifth Report of the Trustee and the activities of the Trustee referred to therein be approved; and
- (j) such further and other relief as counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

1. on November 4, 2011, KPMG Inc. was appointed as Trustee by Order of the Honourable Mr. Justice Colin Campbell (the “**Bankruptcy Order**”);
2. MF Global Canada was, prior to the making of the Bankruptcy Order, the leading futures broker in Canada, based on client transaction volume. MF Global Canada provided execution and clearing services for exchange-traded and over-the-counter derivative products as well as for non-derivative foreign exchange products and securities in the cash market. MF Global Canada operated across a broad range of trading markets, including interest rates, equities, currencies, foreign exchange (FX), metals, agricultural and other commodities (in the U.S. for Chicago Mercantile Exchange (“**CME**”) and non-CME products). MF Global Canada offered to its clients, among other things, exchange-listed financial futures (stock index, bond, currency and short term interest rate swaps), commodities futures (energy, metal and agricultural), options, over-the-counter corporate FX forwards, on-line retail FX trading and equity trading (to both its institutional and retail clients);

3. as such, MF Global Canada was a securities firm within the definition of section 253 of the BIA and its bankruptcy is administered pursuant to the BIA, and in particular, Part XII of the BIA;
4. to facilitate Canadian trades requested by its customers, MF Global Inc. obtained clearing services from MF Global Canada through an omnibus account held by MF Global Canada for the account of MF Global Inc. (the "**Canadian Omnibus Account**");
5. with respect to the cash, securities and other assets held in the Canadian Omnibus Account, MF Global Inc. is a "customer" of MF Global Canada, as that term is defined in section 253 of the BIA;
6. the securities held by MF Global Canada for the account of MF Global Inc. in the Canadian Omnibus Account are not "customer name securities", as that term is defined in section 253 of the BIA;
7. the cash, securities and other assets held by MF Global Canada for the account of MF Global Inc. in the Canadian Omnibus Account have vested in the Trustee pursuant to section 261(1) of the BIA and are properly allocated to the "customer pool fund" of MF Global Canada under section 261 of the BIA;
8. based on the books and records of MF Global Canada, as at the Date of Bankruptcy of MF Global Canada, the amount of \$100,635,945.66 USD (\$102,417,201.90 CAD) in cash and securities was held in the Canadian Omnibus Account for the account of MF Global Inc.;
9. based on the books and records of MF Global Canada, as at the Date of Bankruptcy of MF Global Canada, the amount of \$53,527,428.59 USD (\$54,474,864.08 CAD) in cash and securities was held in the U.S. Omnibus Account for the account of MF Global Canada and MF Global Inc. is indebted to MF Global Canada for the amount of the Collateral Recorded in the U.S. Omnibus Account (the "**MF Global Indebtedness**");
10. on October 31, 2011 the Securities Investor Protection Corporation ("**SIPC**") sought the appointment of a trustee under the *Securities Investor Protection Act* ("**SIPA**") over MF

Global Inc. (the "SIPA Trustee") and on that date, the Honourable Paul A. Engelmayer, United States District Court for the Southern District of New York, entered an Order commencing liquidation of MF Global Inc. pursuant to the provisions of SIPA and appointed James W. Giddens as SIPA Trustee for the liquidation of the business of MF Global Inc. ("SIPA Proceeding");

- 11. it appears unlikely to the Trustee that it will receive any distribution from the SIPA Proceeding. To date, the Trustee has not received any distribution from the SIPA Proceeding;
- 12. the net equity of MF Global Inc. in the bankruptcy proceedings of MF Global Canada is to be determined pursuant to section 253 of the BIA:

"net equity" means, with respect to the securities account or accounts of a customer, maintained in one capacity, the net dollar value of the account or accounts, equal to the amount that would be owed by a securities firm to the customer as a result of the liquidation by sale or purchase at the close of business of the securities firm on the date of bankruptcy of the securities firm, of all security positions of the customer in each securities account, other than customer name securities reclaimed by the customer, including any amount in respect of a securities transaction not settled on the date of bankruptcy but settled thereafter, *less any indebtedness of the customer to the securities firm on the date of bankruptcy* including any amount owing in respect of a securities transaction not settled on the date of bankruptcy but settled thereafter, plus any payment of indebtedness made with the consent of the trustee after the date of bankruptcy; (emphasis added);

- 13. accordingly, the "MF Global Inc. Net Equity Claim" is:

<b>Net Equity Canadian</b>	<b>102,417,201.90 – 54,474,864.08 = 47,942,237.82</b>
	<u><b>or</b></u>
<b>Net Equity USD</b>	<b>100,631,945.66 – 53,527,428.59 = 47,108,517.07</b>

- 14. in the event that further reconciliations are required, each of the SIPA Trustee and the Trustee should have a period of 60 days from the date of a final order determining the MF Global Inc. Net Equity Claim to jointly reconcile the amount of the components of the MF Global Net Equity Claim;
- 15. in the event that the SIPA Trustee and the Trustee are not able to jointly reconcile either the amount of the Collateral Recorded in the U.S. Omnibus Account and the Collateral

Recorded in the Canadian Collateral Account, such unreconciled amount shall be determined by the Ontario Superior Court of Justice (In Bankruptcy and Insolvency) (the "Court") in accordance with a motion for directions by the Trustee to the Court to be conducted pursuant to a process (including as to timetable) to be agreed to between the SIPA Trustee and the Trustee or as directed by the Court;

16. in the event that the securities, options, commodities and commodity futures contracts held by MF Global Canada for the account of MF Global Inc. in the Canadian Omnibus Account are "customer name securities", as that term is defined in section 253 of the BIA, the MF Global Indebtedness must be discharged in full prior to the release of any customer name securities pursuant to section 263 of the BIA;
17. the Canadian Omnibus Agreement between MF Global Inc. and MF Global Canada gives rise to a clear and unambiguous right of set-off vis-à-vis the cash, securities and open securities contracts in the Canadian Omnibus Account for all amounts owing to MF Global Canada, including amounts owing in relation to the U.S. Omnibus Account and a lien against all collateral in the Canadian Omnibus Account for amounts owing to it by MF Global Inc., including the MF Global Indebtedness;
18. the Trustee's ability to assert a right of set-off in a bankruptcy proceeding is expressly preserved by section 97(3) of the BIA;
19. sections 34, 253, 261 and 264 of the BIA;
20. rule 10 of the *Rules of Civil Procedure* (Ontario); and
21. such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. the Fifth Report of the Trustee dated January 31, 2012;
2. the First Report of the Trustee dated November 11, 2011;

3. the Supplement to the First Report of the Trustee dated November 13, 2011;
4. the Second Report of the Trustee dated November 23, 2011;
5. the Third Report of the Trustee dated December 16, 2011;
6. the Fourth Report dated January 25, 2012;
7. the Supplement to the Fourth Report dated January 26, 2012; and
8. such further and other material as counsel may advise and this Honourable Court may permit.

DATE: January 31, 2012

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**MF GLOBAL CANADA CO., IN BANKRUPTCY**

**SERVICE LIST**

(Updated January 27, 2012)

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# **SCHEDULE "A"**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

THE HONOURABLE ) DAY, THE DAY  
JUSTICE ) OF , 2012

**IN THE MATTER OF THE BANKRUPTCY OF  
MF GLOBAL CANADA CO.,  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**ORDER  
(RE MF GLOBAL INC. NET EQUITY CLAIM)**

**THIS MOTION** made by KPMG Inc., in its capacity as the trustee in bankruptcy (the "Trustee") of MF Global Canada Co. ("MF Global Canada") was heard on this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Fifth Report of the Trustee dated January 31, 2012 (the "Fifth Report") and on hearing the submissions of counsel for the Trustee, James W. Giddens, the SIPA Trustee of MF Global Inc. (the "SIPA Trustee") and ■, no one else appearing.

1. **THIS COURT ORDERS** that MF Global Inc. is a "customer" of MF Global Canada, as that term is defined in section 253 of the *Bankruptcy and Insolvency Act* (the "BIA").
2. **THIS COURT ORDERS** that the securities, options, commodities and commodity futures contracts held by MF Global Canada for the account of MF Global Inc. in the

Canadian Omnibus Account at MF Global Canada are not “customer name securities”, as that term is defined in section 253 of the BIA.

- 3. **THIS COURT ORDERS** that the cash, securities, options, commodities and commodity futures contracts and other assets held by MF Global Canada for the account of MF Global Inc. in the Canadian Omnibus Account have vested in the Trustee pursuant to section 261(1) of the BIA and are properly allocated to the “customer pool fund” of MF Global Canada pursuant to section 261(2) of the BIA.
- 4. **THIS COURT ORDERS** that the net equity of MF Global Inc. with respect to any and all claims of MF Global Inc. against MF Global Canada arising out of or relating to the Canadian Omnibus Account (the “**MF Global Inc. Net Equity Claim**”) is:

<b>Net Equity Canadian</b>	<b>102,417,201.90 – 54,474,864.08 = 47,942,237.82</b>
	<b><u>or</u></b>
<b>Net Equity USD</b>	<b>100,631,945.66 – 53,527,428.59 = 47,108,517.07</b>

- 5. **THIS COURT ORDERS** that each of the SIPA Trustee and the Trustee shall have a period of sixty (60) days from the date hereof to jointly reconcile the amount of each of the Collateral Recorded in the U.S. Omnibus Account and the Collateral Recorded in the Canadian Omnibus Account (as such terms are defined in the Fifth Report).
- 6. **THIS COURT ORDERS** that, in the event that the SIPA Trustee and the Trustee are not able to jointly reconcile either the amount of the Collateral Recorded in the U.S. Omnibus Account and the Collateral Recorded in the Canadian Omnibus Account, such unreconciled amount shall be determined by the Ontario Superior Court of Justice (In Bankruptcy and Insolvency) (the “**Court**”) in accordance with a motion for directions by the Trustee to the Court to be conducted pursuant to a process (including as to timetable) to be agreed to between the SIPA Trustee and the Trustee or as directed by the Court.
- 7. **THIS COURT ORDERS** that the Trustee is entitled to assert all of the rights given to MF Global Canada pursuant to the Canadian Omnibus Agreement and at law relating to the Canadian Omnibus Account

8. **THIS COURT ORDERS** that the Fifth Report of the Trustee, and the activities of the Trustee referred to therein be and the same are hereby approved.

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**IN THE MATTER OF THE BANKRUPTCY OF MF GLOBAL CANADA CO.,  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

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**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

PROCEEDINGS COMMENCED AT TORONTO

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**ORDER**

**(RE MF GLOBAL INC. NET EQUITY CLAIM)**

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MF Global Canada Co.

**IN THE MATTER OF THE BANKRUPTCY OF MF GLOBAL CANADA CO. OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

**PROCEEDINGS COMMENCED AT TORONTO**

**NOTICE OF MOTION**  
(re MF Global Inc. Net Equity Claim)

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bankruptcy of MF Global Canada Co.

TOR01:4838107: v2

# **TAB 2**

Court File Number 31-OR-207854-T

***ONTARIO***

**SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

IN THE MATTER OF THE BANKRUPTCY OF  
MF GLOBAL CANADA CO., OF THE CITY OF  
TORONTO, IN THE PROVINCE OF ONTARIO

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**FIFTH REPORT OF THE TRUSTEE  
(JANUARY 31, 2012)**

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## THE BANKRUPTCY

1. On November 2, 2011 an Application for Bankruptcy Order was issued by the Canadian Investor Protection Fund (“CIPF”) against MF Global Canada Co. (“MF Global Canada”). CIPF is a customer compensation body within the meaning of section 253 of the *Bankruptcy and Insolvency Act* (the “BIA”).
2. On November 4, 2011 (the “Date of Bankruptcy”) MF Global Canada consented to the immediate making of a Bankruptcy Order and KPMG Inc. was appointed as trustee in bankruptcy of MF Global Canada (the “Trustee”). MF Global Canada was, prior to the Date of Bankruptcy, (as described in greater detail below), a “securities firm” within the meaning of section 253 of the BIA. As a result, the Trustee has a mandate to administer the estate of MF Global Canada in accordance with the BIA, including Part XII thereof.

## PURPOSE OF THE REPORT

3. The purpose of this Report (the “Fifth Report”) and, to the extent relevant, the Previous Reports, is to provide an evidentiary basis upon which this Honourable Court can make an Order:
  - (a) declaring that:
    - (i) MF Global Inc. is a “customer” of MF Global Canada, as that term is defined in section 253 of the BIA;
    - (ii) the securities, options, commodities and commodity futures contracts held by MF Global Canada for the account of MF Global Inc. in the Canadian Omnibus Account (as defined below) are not “customer name securities”, as that term is defined in section 253 of the BIA;
    - (iii) the cash, securities, options, commodities and commodity futures contracts and other assets held by MF Global Canada for the account of

MF Global Inc. in the Canadian Omnibus Account (as defined below) are vested in the Trustee pursuant to section 261(1) and are properly allocated to the "customer pool fund" of MF Global Canada under section 261(2) of the BIA;

- (iv) the net equity of MF Global Inc. with respect to any and all claims of MF Global Inc. against MF Global Canada arising out of or relating to the Canadian Omnibus Account (as defined below) (the "**MF Global Claim**") is \$47,108,517.07 USD (\$47,942,337.82 CAD); and
- (v) that the Trustee is entitled to assert all of the rights given to MF Global Canada pursuant to the Canadian Omnibus Agreement and at law relating to the Canadian Omnibus Account.

4. In preparing this Fifth Report, including certain of the appendices hereto as described in greater detail below, the Trustee has relied, without any independent verification, on information contained in the books and records of MF Global Canada and information provided to the Trustee by various contract counterparties providing clearing, back office and support arrangements for the operations of MF Global Canada. The Trustee has not audited, reviewed or otherwise verified the information provided to it but has taken various steps to confirm the reasonableness and accuracy of such information from such third parties. Therefore, reliance by any third party on the information provided for in this Fifth Report and in the appendices hereto shall be subject to the foregoing qualifications.

5. For convenience, references to "securities" in the balance of this Fifth Report include commodities and commodity futures contracts and options on commodities and commodity futures contracts. This is consistent with the definition of "security" provided in section 253 of the BIA.

## **PREVIOUS REPORTS**

6. The Trustee has filed several previous reports with the Court that contain information regarding the background of MF Global Canada, the bankruptcy proceeding and updates on various matters in the administration of the estate. Copies of each of the Reports are posted on the Trustee's website established for the MF Global Canada bankruptcy proceedings – [www.kpmg.ca/mfglobalcanada](http://www.kpmg.ca/mfglobalcanada). A separate brief will be available for the Court and any party requesting same that will include copies of:

- (i) the First Report dated November 11, 2011;
- (ii) the Supplement to the First Report dated November 13, 2011;
- (iii) the Second Report dated November 23, 2011;
- (iv) the Third Report dated December 16, 2011;
- (v) the Fourth Report dated January 25, 2012; and
- (vi) the Supplement to the Fourth Report dated January 26, 2012.

(collectively, the “**Previous Reports**”).

## **BACKGROUND OF MF CANADA**

7. MF Global Canada was, prior to its suspension by IIROC (as described below) and the making of the Bankruptcy Order, the leading futures broker in Canada, based on client transaction volume. MF Global Canada provided execution and clearing services for exchange-traded and over-the-counter derivative products as well as for non-derivative foreign exchange products and securities in the cash market. MF Global Canada operated across a broad range of trading markets, including interest rates, equities, currencies, foreign exchange (FX), metals, agricultural and other commodities (in the U.S. for Chicago Mercantile Exchange (“**CME**”) and non-CME products). MF Global Canada offered to its clients, among other things, exchange-listed financial futures (stock index, bond, currency and short term interest rate swaps), commodities futures (energy, metal and agricultural), options, over-the-counter (“**OTC**”)

corporate FX forwards, on-line retail FX trading and equity trading (to both its institutional and retail clients). Preliminary information received by the Trustee indicates that all client collateral is accounted for. More definitive information in this regard will be developed by the Claims Process approved by the Court. However, the Trustee is continuing its investigation and, at this time, the Trustee has not fully accessed the books and records of MF Global Canada in the possession of MF Global Inc., which was providing back office support for MF Global Canada,

8. The business of MF Global Canada was carried out through several key business relationships, namely:

- (a) clearing services in the U.S. for CME related products were provided by BNY Mellon Clearing, LLC ("**BNYMC**") through an omnibus account pursuant to an omnibus agreement with MF Global Canada;
- (b) clearing services in Canada were provided through the Canadian Derivatives Clearing Corporation ("**CDDC**") and ICE Clear Canada Inc. ("**ICE Canada**");
- (c) foreign exchange transactions were cleared through a related entity, MF Global UK Ltd. ("**MF Global UK**");
- (d) clearing services in the US for non-CME products were provided by its affiliate, MF Global Inc., through an omnibus account pursuant to an omnibus agreement with MF Global Canada. The Trustee understands that MF Global Inc. had an omnibus account with MF Global UK and that transactions for customers of MF Global Canada on the London Metals Exchange ("**LME**") and other non-North American Exchanges were processed through MF Global Canada's omnibus account with MF Global Inc. and through MF Global Inc.'s omnibus account with MF Global UK;
- (e) MF Global Canada had a Type III introducing/carrying arrangement with Fidelity Clearing Canada ULC ("**Fidelity**") for equity and bond trading (for both

institutional and retail clients). MF Global Canada also utilized the Fidelity arrangement for trading in products held within registered plans.

as more particularly described in the diagram attached as **Appendix "A"**.

9. MF Global Canada is a member of CIPF. As a result, the accounts of customers, if eligible, are protected by CIPF for losses of property as a result of an insolvency of MF Global Canada up to a limit of \$1 million per customer for any combination of cash and securities. For this reason, and in accordance with Part XII of the BIA, the Trustee has worked closely with representatives of CIPF to review the affairs of MF Global Canada since its appointment in an attempt to reconcile customer accounts.

#### **MF CANADA RELATED PARTIES**

10. MF Global Canada is an indirect subsidiary of MF Global Holdings, Ltd. ("**MF Global Holdings**"). On October 31, 2011, MF Global Holdings filed for protection under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "**U.S. Bankruptcy Court**"). A copy of the "MF Global Legal Structure" is attached hereto as **Appendix "B"**. The Legal Structure was included as Exhibit "A" to the Declaration of Bradley I. Abelow filed by MF Global Holdings with the U.S. Bankruptcy Court in support of MF Global Holdings' first day applications and motions.

11. MF Global Inc. is a broker dealer in the US and is an affiliate of MF Global Canada in the MF Global Legal Structure. On October 31, 2011 the Securities Investor Protection Corporation ("**SIPC**") sought the appointment of a trustee under the *Securities Investor Protection Act* ("**SIPA**") over MF Global Inc. (the "**SIPA Trustee**") and on that date, the Honourable Paul A. Engelmayer, United States District Court for the Southern District of New York, entered an Order commencing liquidation of MF Global Inc. pursuant to the provisions of SIPA (the "**MF Global Inc. Liquidation Order**").

12. The MF Global Inc. Liquidation Order, *inter alia*, appointed James W. Giddens as SIPA Trustee for the liquidation of the business of MF Global Inc and removed the case to the US

Bankruptcy Court as required for SIPA. The SIPA Trustee has begun liquidating the business of MF Global Inc.

13. Various other affiliates have been placed in administrative proceedings around the world, the particulars of some of which are as follows:

- (a) MF Global Canada is related to MF Global UK, the UK arm of the MF Global Legal Structure. MF Global UK has been placed in administration under the Special Administration Regime in the UK and Michael Pink, Richard Fleming and Richard Heis have been appointed Special Administrators of MF Global UK.
- (b) On November 2, 2011, Patrick Cowley, Fergal Power and Lui Yee Man were appointed Joint and Several Provisional Liquidators by the High Court of Hong Kong S.A.R. over MF Global Holdings HK Ltd. and MF Global Hong Kong Ltd.
- (c) On November 2, 2011, Messrs. Bog Yap Cheng Ghee, Peter Chay Fook Yuen and Roger Tay Puay Cheng were appointed as Provisional Liquidators of MF Global Singapore Pte. Limited.
- (d) On November 1, 2011, Christopher Robert Campbell, David John Frank Lombe, and Vaughan Neil Strawbridge were appointed Joint & Several Administrators pursuant to section 436A of the Corporations Act 2001 (UK) for MF Global Australia Limited, MF Global Securities Australia Limited and Brokerone Pty Limited.

#### **IIROC SUSPENSION OF MF CANADA**

14. The Chapter 11 filing by MF Global Holdings and appointment of the SIPA Trustee started a series of cascading events that caused immediate issues for the operations of MF Global Canada. These included:

- (a) MF Global Canada was unable to access funds and securities with a value of approximately \$54 million held in the omnibus account at MF Global Inc. as a result of the appointment of the SIPA Trustee;
  - (b) BNYMC advised MF Global Canada on October 31, 2011 that, due to the uncertainties regarding the status of the affiliates of MF Global Canada, BNYMC would hold all excess funds in the omnibus account at BNYMC until it received guidance from the appropriate regulatory authorities or the court;
  - (c) BNYMC advised MF Global Canada later on October 31, 2011 that events relating to MF Global Canada's affiliates represented a "Material Adverse Change" under the omnibus agreement and demanded that additional margin be posted before the opening of trading on November 1, 2011; and
  - (d) BNYMC subsequently advised MF Global Canada that funds would not be released from the omnibus account to MF Global Canada without direction from the appropriate regulatory authorities or the court.
15. As at November 1, 2011, BNYMC held approximately \$130 million of collateral which was placed there by MF Global Canada for transactions on behalf of MF Global Canada customers.
16. On October 31, 2011, IIROC delivered an "Early Warning Designation" letter to MF Global Canada which included the following terms:

**Early Warning Restriction**

In reference to IIROC Rule 30.3(iv), notice is hereby given that your firm is immediately restricted from the following activities unless the prior written consent of the Vice President, Financial & Operations Compliance has been obtained:

- (1) reduce your firm's capital in any matter including redemption, repurchase or cancellation of any of its shares;
- (2) reduce or repay any indebtedness which has been subordinated with the approval of IIROC;

- (3) directly or indirectly make any payments by way of loan, advance, bonuses, dividend, repayment of capital or other distribution of assets to any director, officer, partner, shareholder, related company or affiliate; or
- (4) increase non-allowable assets, unless a prior binding commitment to do so exists, or enter into any new commitments, which would have the effect of materially increasing the non-allowable assets of your firm.

17. On November 1, 2011, IIROC delivered a letter to MF Global Canada confirming that IIROC had determined, based on the most recent estimated weekly risk adjusted capital position of MF Global Canada in the amount of \$7.2 million as at October 26, 2011 and the inability of MF Global Inc. to remit excess margin collateral in the amount of \$25 million held in the "Canadian Omnibus Settlement" account at BNYMC, that MF Global Canada was capital deficient by approximately \$18 million. As a result, the early warning restrictions set out in the Early Warning Designation letter applied and MF Global Canada was further restricted from the transfer out of any customer assets or remittance of excess margin collateral held on behalf of MF Global Inc. IIROC required the capital deficiency of MF Global Canada to be rectified by no later than 3:30 p.m. EST on November 1, 2011 or suspension proceedings would commence. A copy of IIROC's letter is attached hereto as **Appendix "C"**.

18. MF Global Canada could not rectify its capital deficiency in a timely manner. On November 1, 2011, IIROC convened an expedited hearing to consider the suspension of the membership rights and privileges of MF Global Canada. MF Global Canada consented to an order for its suspension and that MF Global Canada immediately cease dealing with the public.

19. The Trustee is informed by its counsel that Section 29 of the *Securities Act* (Ontario) ("OSA") provides that a firm's registration (under the OSA) is suspended if the self-regulatory organization ("SRO") (in this case IIROC) suspends membership, where membership in the SRO is a condition of the firm's registration under Ontario securities law. Further, operation of National Instrument 31-103, Section 10.2 directs that an IIROC suspension acts as a suspension by the Ontario Securities Commission ("OSC") of the firm's registration in the investment category. As a result, MF Global Canada was deemed to be suspended by the OSC.

20. As a result of the suspension by IIROC and the deemed suspension by the OSC, MF Global Canada was unable to deal with its clients unless and until the capital deficiency was corrected. Given the bankruptcy proceedings with respect to MF Global Inc. and MF Holdings, it did not appear that MF Global Canada had any ability to obtain assistance from its related parties to rectify the deficiency. In addition, the cause of the deficiency, namely the withholding of funds payable to MF Global Canada by MF Global Inc. and BNYMC pursuant to the omnibus agreements placed MF Global Canada in the position of being unable to address its capital deficiency.

21. As a result of the foregoing CIPF issued the Application for a Bankruptcy Order on November 2, 2011 referred to above and the Court made the Bankruptcy Order referred to above.

#### **BUSINESS BETWEEN MF CANADA AND MF GLOBAL INC.**

22. Included among the products offered by MF Global Canada to its customers were commodities, commodity futures contracts and options on commodity and commodity futures contracts sold in the United States, both on and off the CME. To facilitate trades in these products, MF Global Canada obtained clearing services (i) for trades on the CME, through BNY Mellon Clearing, LLC, and (ii) for trades off the CME, through MF Global Inc.

23. The clearing services offered to MF Global Canada by MF Global Inc. were carried out through an omnibus account held by MF Global Inc. for the account of MF Global Canada (the "**U.S. Omnibus Account**"). The U.S. Omnibus Account was created by the Foreign Broker-Omnibus Account Agreement dated February 25, 2005 as between Refco LLC and Refco Futures (Canada) Ltd. (the "**U.S. Omnibus Agreement**"). The Trustee understands that MF Global Inc. is the successor or assignee to Refco LLC and that MF Global Canada is a successor to Refco Futures (Canada) Ltd. with respect to the U.S. Omnibus Agreement. A copy of the U.S. Omnibus Agreement is attached as **Appendix "D"** hereto.

24. Based on the Trustee's investigation of the MF Global Canada business and a review of the U.S. Omnibus Agreement, the Trustee understands that the clearing services offered by MF Global Inc. to MF Global Canada operated as follows:

- (a) a customer of MF Global Canada would place an order with MF Global Canada to buy or sell commodities, commodity future contracts and/or options on commodities or commodity futures contracts, from a U.S. exchange (off the CME) or a non-North American exchange (such as the LME);
- (b) MF Global Canada would place a corresponding buy or sell order with MF Global Inc.;
- (c) MF Global Inc. would execute the order in its own name and carry any resulting cash and/or securities in the U.S. Omnibus Account that it held for the account of MF Global Canada. In cases where the trades were for non-North American exchanges, cash, collateral and positions also moved through the MF Global Inc. omnibus account with MF Global UK;
- (d) MF Global Canada would update its internal records to allocate the new cash and/or securities in the U.S. Omnibus Account to the customer that originally placed the order; and
- (e) MF Global Inc. would continue to hold the cash and/or securities for MF Global Canada and its customers in the U.S. omnibus account (or UK omnibus account) until MF Global Canada requested a new trade or asked to be paid out.

25. A similar arrangement existed between MF Global Inc. and MF Global Canada for Canadian trades requested by the customers of MF Global Inc. Moreover, prior to the MF Global Inc. Liquidation Order, MF Global Inc. operated as a broker dealer for securities and commodity futures contracts. To facilitate Canadian trades requested by its customers, MF Global Inc. obtained clearing services from MF Global Canada through an omnibus account held by MF Global Canada for the account of MF Global Inc. (the "**Canadian Omnibus Account**" and together with the U.S. Omnibus Account, the "**Omnibus Accounts**"). The Canadian Omnibus Account was created by the Omnibus Account Agreement dated February 28, 1995 as between Refco LLC and Refco Futures (Canada) Ltd. (the "**Canadian Omnibus Agreement**", and together with the U.S. Omnibus Agreement, the "**Omnibus Agreements**"). A copy of the Canadian Omnibus Agreement is attached as **Appendix "E"** hereto.

26. The Trustee understands that the clearing services offered by MF Global Canada to MF Global Inc. pursuant to the Canadian Omnibus Agreement were similar to the services offered to MF Global Canada by MF Global Inc. under the U.S. Omnibus Agreement. In essence:

- (a) a customer of MF Global Inc. would place an order with MF Global Inc. to buy or sell commodities, commodity future contracts and/or options on commodities or commodity futures contracts, from a Canadian exchange;
- (b) MF Global Inc. would place a corresponding buy or sell order with MF Global Canada;
- (c) MF Global Canada would execute the order in its own name and carry any resulting cash and/or securities in the Canadian Omnibus Account that it held for the account of MF Global Inc.; and
- (d) MF Global Canada would continue to hold the cash and/or securities for MF Global Inc. and its customers in the Canadian Omnibus Account until MF Global Inc. requested a new trade or asked to be paid out.

27. The Trustee notes that the cash and securities held by MF Global Canada in the Canadian Omnibus Account were held by third party financial institutions in accounts in the name of MF Global Canada or third parties who provided clearing services to MF Global Canada such as Fidelity Clearing Canada ULC, Canadian Derivatives Clearing Corporation ("CDCC") and ICE Clear Canada Inc. in accounts in the name of MF Global Canada.

#### **CUSTOMER POOL FUND**

28. Pursuant to section 261(1) of the BIA, when a securities firm becomes bankrupt, the following assets vest in the trustee:

- (a) securities owned by the securities firm;

- (b) securities and cash held by any person for the account of the securities firm; and
- (c) securities and cash held by the securities firm for the account of a customer, other than customer name securities.

29. The Canadian Omnibus Agreement provides, in part:

In consideration of [MF Global Canada] maintaining one or more omnibus accounts (the "omnibus account") in commodities, commodity futures contracts, options on commodities or options on commodity futures contracts (collectively, "futures contracts") for [MF Global Inc.] through which [MF Global Inc.'s] transactions with [MF Global Canada] on behalf of its customers will be effected, it is agreed as follows:

:

2. OMNIBUS ACCOUNT. Unless [MF Global Inc.] instructs [MF Global Canada] otherwise at the time of placing an order with [MF Global Canada], all transactions effected by [MF Global Inc.] with [MF Global Canada] shall be effected in the omnibus account established by this Agreement. All monies, securities, commodities, futures contracts, or other property which are carried in the omnibus account shall be for the account of [MF Global Inc.] and its customers, and shall be segregated in accordance with the Commodity Futures Act of 1980 and applicable regulations of the Investment Dealers Association of Canada and the Montreal Exchange.

30. Pursuant to paragraph 2 of the Canadian Omnibus Agreement, MF Global Canada holds cash and securities in the Canadian Omnibus Account, which is a securities account, for the account of MF Global Inc.

31. Based on the books and records of MF Global Canada, as at the Date of Bankruptcy of MF Global Canada, the amount of \$100,635,945.66 USD (\$102,417,201.90 CAD) in cash and securities was held in the Canadian Omnibus Account for the account of MF Global Inc. (the "**Collateral Recorded in the Canadian Omnibus Account**"). A copy of the account statement for the Canadian Omnibus Account (the "**Canadian Omnibus Account Statement**") is attached as **Appendix "F"** hereto.

32. As a result, the Collateral Recorded in the Canadian Omnibus Account vested in the Trustee.

33. Where assets vest in the trustee of a bankrupt securities firm, section 261(2) of the BIA sets out the proper treatment of those assets. Under section 261(2), the trustee in bankruptcy is directed to establish two funds: a "customer pool fund" and a "general fund". The customer pool fund consists of the following kinds of property:

(i) securities, including those obtained after the date of the bankruptcy, but excluding customer name securities and excluding eligible financial contracts to which the firm is a party, that are held by or for the account of the firm

(A) for a securities account of a customer,

(B) for an account of a person who has entered into an eligible financial contract with the firm and has deposited the securities with the firm to assure the performance of the person's obligations under the contract, or

(C) for the firm's own account,

(ii) cash, including cash obtained after the date of the bankruptcy, and including

(A) dividends, interest and other income in respect of securities referred to in subparagraph (i),

(B) proceeds of disposal of securities referred to in subparagraph (i), and

(C) proceeds of policies of insurance covering claims of customers to securities referred to in subparagraph (i),

that is held by or for the account of the firm

(D) for a securities account of a customer,

(E) for an account of a person who has entered into an eligible financial contract with the firm and has deposited the cash with the firm to assure the performance of the person's obligations under the contract, or

(F) for the firm's own securities account, and

(iii) any investments of the securities firm in its subsidiaries that are not referred to in subparagraph (i) or (ii);

34. As a result, the Collateral Recorded in the Canadian Omnibus Account is, pursuant to the provisions of the BIA and in the opinion of the Trustee, in the "customer pool fund". The Trustee is of the opinion that none of the securities contained in the Canadian Omnibus Account are "customer name securities" as that term is defined in section 253 of the BIA.

## COLLATERAL IN THE U.S. OMNIBUS ACCOUNT

35. Based on the books and records of MF Global Canada, as at the Date of Bankruptcy of MF Global Canada, the amount of \$53,527,428.59 USD (\$54,474,864.08 CAD) in cash and securities was held in the U.S. Omnibus Account for the account of MF Global Canada (the “**Collateral Recorded in the U.S. Omnibus Account**”). A copy of the account statement for the U.S. Omnibus Account (the “**U.S. Omnibus Account Statement**”) is attached as **Appendix “G”** hereto.

36. MF Global Inc. is indebted to MF Global Canada for the amount of the Collateral Recorded in the U.S. Omnibus Account (the “**MF Global Indebtedness**”)

37. The SIPA Trustee has submitted a memorandum to the U.S. Bankruptcy Court pursuant to the U.S. Bankruptcy Court’s direction, to set forth the SIPA Trustee’s position regarding how he expects to allocate and distribute the property of the MF Global Inc. estate under the statutory and regulatory provisions applicable to the SIPA Proceeding (the “**Memorandum**”). A copy of the Memorandum is attached hereto as **Appendix “H”** hereto. The Memorandum provides, in part:

21. Claims of non-public customers are subordinated to the claims of public customers and constitute a separate class for purposes of calculating distribution amounts. Thus, no portion of the commodity customer property estate may be allocated to pay non-public customer claims until all public customer claims have been satisfied in full. 17 C.F.R. § 190.08(b). Proprietary accounts of MF Global Inc.’s affiliates, for example, would fall in this category and are excluded from public customer distributions. See 17 C.F.R. § 190.01(bb); 17 C.F.R. § 1.3(y).

38. The SIPA Trustee has also filed an Omnibus Reply Memorandum with the U.S. Bankruptcy Court regarding the same motion. A copy of the Omnibus Reply Memorandum is attached hereto as **Appendix “I”** hereto and provides, in part:

With respect to commodity customer property, the Respondents do not contest the Trustee’s summary of the key principles guiding the determination of claims and the allocation and distribution of customer property, including that (1) commodity customer property will be allocated and distributed pro rata by account class first to MF Global Inc.’s public commodity customers and then to MF Global Inc.’s non-public commodity customers (*id.* at ¶¶ 18-24)

39. It is the Trustee's understanding that, as an affiliate, MF Global Canada is a "non-public commodity customer" of MF Global Inc. It appears unlikely to the Trustee that it will receive any distribution from the MF Global Bankruptcy Proceeding. To date, the Trustee has not received any distribution from the MF Global Bankruptcy Proceeding. Any distribution received by the Trustee to reduce the MF Global Indebtedness would be included in any reconciliation of the MF Global Inc. Net Equity Claim (as referred to below).

#### THE MF GLOBAL INC. CLAIM

40. As a customer of MF Global Canada, MF Global Inc. may be entitled to share in the customer pool fund or the general fund of MF Global Canada only in proportion to its net equity and in accordance with the priority provisions of the BIA.

41. The net equity of MF Global Inc. in the bankruptcy proceedings of MF Global Canada is to be determined pursuant to the provisions of the BIA. In order to calculate the net equity of MF Global Inc., the Trustee has referred to the definition of "net equity" set out in section 253 of the BIA:

"net equity" means, with respect to the securities account or accounts of a customer, maintained in one capacity, the net dollar value of the account or accounts, equal to the amount that would be owed by a securities firm to the customer as a result of the liquidation by sale or purchase at the close of business of the securities firm on the date of bankruptcy of the securities firm, of all security positions of the customer in each securities account, other than customer name securities reclaimed by the customer, including any amount in respect of a securities transaction not settled on the date of bankruptcy but settled thereafter, *less any indebtedness of the customer to the securities firm on the date of bankruptcy* including any amount owing in respect of a securities transaction not settled on the date of bankruptcy but settled thereafter, plus any payment of indebtedness made with the consent of the trustee after the date of bankruptcy; (emphasis added)

42. The Canadian Omnibus Account Statement, attached as Appendix "F" hereto, establishes that the net dollar value of the Canadian Omnibus Account as at the close of business on the date of the bankruptcy of MF Global Canada was \$100,635,945.66 USD (\$102,417,201.90 CAD). The U.S. Omnibus Account Agreement and the U.S. Omnibus Account Statement establish that on the date of the bankruptcy of MF Global Canada, MF Global Inc. was indebted to MF Global

Canada with respect to the cash, securities, options, commodities and commodity futures contracts in the U.S. Omnibus Account in the amount of \$53,527,428.59 USD (\$54,474,864.08 CAD). Accordingly, the net equity of MF Global Inc. is the difference between these two amounts, which is:

<b>Net Equity Canadian</b>	<b>(102,417,201.90 – 54,474,864.08) = 47,942,237.82</b>
	<b>or</b>
<b>Net Equity USD</b>	<b>(100,631,945.66 – 53,527,428.59) = 47,108,517.07</b>

(the “MF Global Inc. Net Equity Claim”).

43. It is the Trustee’s information that it may be required to make certain adjustments to the amount of the Collateral Recorded in the U.S. Omnibus Account or the Collateral Recorded in the Canadian Omnibus Account which may revise the MF Global Inc. Net Equity Claim. This is, in part, due to the fact that the Trustee has not yet received confirmation of the final value of various positions on the foreign (European) exchanges that were terminated as a result of the bankruptcy proceedings relating to the various MF Global entities. The Trustee proposes to address this issue by providing for adjustments to the MF Global Inc. Net Equity Claim through a reconciliation process with respect to the Canadian Omnibus Account and the U.S. Omnibus Account. Each of the SIPA Trustee and the Trustee shall have a period of 60 days from the date of a final order fixing the amount of the MF Global Inc. Net Equity Claim to jointly reconcile the amount of each of the Collateral Recorded in the U.S. Omnibus Account and the Collateral Recorded in the Canadian Omnibus Account. In the event that the SIPA Trustee and the Trustee are not able to jointly reconcile either the amount of the Collateral Recorded in the U.S. Omnibus Account and the Collateral Recorded in the Canadian Omnibus Account, such unreconciled amount shall be determined by the Ontario Superior Court of Justice (In Bankruptcy and Insolvency) (the “Court”) in accordance with a motion for directions by the Trustee to be conducted pursuant to a process (including as to timetable) to be agreed to between the SIPA Trustee and the Trustee or as directed by the Court.

**THE OMNIBUS AGREEMENTS**

44. The Canadian Omnibus Agreement provides, in part:

In consideration of [MF Global Canada] maintaining one or more omnibus accounts (the "omnibus account") in commodities, commodity futures contracts, options on commodities or options on commodity futures contracts (collectively, "futures contracts") for [MF Global Inc.] through which [MF Global's] transactions with [MF Global Canada] on behalf of its customers will be effected, it is agreed as follows:

:

2. OMNIBUS ACCOUNT. Unless [MF Global Inc.] instructs [MF Global Canada] otherwise at the time of placing an order with [MF Global Canada], all transactions effected by [MF Global Inc.] with [MF Global Canada] shall be effected in the omnibus account established by this Agreement. All monies, securities, commodities, futures contracts, or other property which are carried in the omnibus account shall be for the account of [MF Global Inc.] and its customers, and shall be segregated in accordance with the Commodity Futures Act of 1980 and applicable regulations of the Investment Dealers Association of Canada and the Montreal Exchange.

:

6. SECURITY. All funds, securities, commodities, futures contracts and other property of [MF Global Inc.] which [MF Global Canada] at any time may be carrying for [MF Global Inc.] or which may at any time be in [MF Global Canada]'s possession or control for any purpose, including safekeeping, are to be held by [MF Global Canada] as security and subject to a general lien and right of setoff for all liabilities of the omnibus account or of [MF Global Inc.] to [MF Global Canada].

:

8. INDEMNIFICATION. [MF Global Inc.] shall indemnify and hold harmless [MF Global Canada] and its affiliates, directors, officers, stockholders, employees and agents from and against all losses, claims, actions, demands, suits, proceedings, damages, and expenses (including attorneys' fees) arising out of or relating to ... (e) [MF Global Inc.'s] failure to comply with any provision of any applicable law, rule, or regulation, including the rules of [MF Global Canada]. [MF Global Canada] is authorized to withhold, transfer, use and apply any funds or other property of [MF Global Inc.] in its possession whenever [MF Global Canada] deems it necessary to pay amounts or to discharge obligations owing to [MF Global Canada] by reason of this paragraph.

45. The U.S. Omnibus Account Agreement provides, in part:

In consideration of [MF Global Inc.] maintaining an omnibus account (the "omnibus account") in commodities, commodity futures contracts, options on commodities or options on commodity futures contracts (collectively, "futures

contracts”) through which [MF Global Canada’s] transactions with [MF Global Inc.] on behalf of its customers will be effected, it is agreed as follows:

:

13. STATEMENTS AND CONFIRMATIONS. Confirmations of trades, statements of account, margin calls and any other notices sent by [MF Global Inc.] to the omnibus account shall be conclusively deemed accurate and complete if not objected to in writing by [MF Global Canada] within five business days from the date on which such document was mailed.

46. Paragraph 6 of the Canadian Omnibus Agreement between MF Global Inc. and MF Global Canada gives rise to a clear and unambiguous right of set-off vis-à-vis the cash, securities and open securities contracts in the Canadian Omnibus Account for all amounts owing to MF Global Canada, including amounts owing in relation to the U.S. Omnibus Account. The Trustee’s ability to assert a right of set-off in a bankruptcy proceeding is expressly preserved by section 97(3) of the BIA and, while the bankruptcy regime for securities firms under Part XII departs in some respects from the bankruptcy regime for other types of companies, section 255 of the BIA specifies that, absent a conflict, all of the provisions of the BIA, so far as they are applicable, apply in respect of the bankruptcy of a securities firm under Part XII. The rights of the Trustee to effect a set-off is consistent with the definition of “net equity” pursuant to section 253 of the BIA.

#### **SIGNIFICANCE TO THE ESTATE**

47. On behalf of the Trustee, the Trustee’s solicitors Borden Ladner Gervais LLP (“BLG”), wrote to the SIPA Trustee on December 23, 2011 setting out the Trustee’s position on the quantification of the MF Global Inc. Net Equity Claim and requesting that the SIPA Trustee execute a written acknowledgement accepting the Trustee’s proposed treatment of the MF Global Inc. Net Equity Claim. The SIPA Trustee has not provided the requested acknowledgement.

48. The Trustee and the SIPA Trustee have had various discussions with respect to the treatment of the MF Global Inc. Net Equity Claim. However, the Trustee and the SIPA Trustee have been unable to agree on an approach to resolve the MF Global Inc. Net Equity Claim.

49. Unfortunately, the issue of the quantification and resolution of the MF Global Inc. Net Equity Claim is both material and significant to the estate in terms of the timeliness of its resolution.

50. As described in the Previous Reports, the Trustee has taken a number of steps since November 4, 2011 to transfer customer accounts and/or make payments to customers with respect to their net equity claims in order to reduce the risk of prejudice to former customers of MF Global Canada and in order to fulfill the Trustee's mandate under the BIA and the Orders of this Court. To date, the Canadian Omnibus Account has not been included in these efforts. Given that: (a) MF Global Inc. is currently in liquidation proceedings under the SIPA; and (b) the size of the MF Global Inc. Net Equity Claim is significant relative to the size of other customer claims in these bankruptcy proceedings, the Trustee is of the view that this Court should have an opportunity to review and approve of (or determine) the proposed quantification and resolution of the MF Global Inc. Net Equity Claim.

51. The Trustee has been contacted by a number of significant customers who have expressed frustration and hardship in connection with the delay in accessing the balance of the net equity in their accounts. While the Trustee has attempted to reduce the financial hardship to other Customers by distributing as much of the net equity calculations as quickly as possible, the Trustee's ability to distribute further funds to other Customers is dependent on the determination of the MF Global Inc. Net Equity Claim. The Trustee must, in its view, take all reasonable steps possible and permitted by the BIA and Part XII thereof, with the assistance and authorization of the Court, to facilitate the transfer of the balance of net equity amounts to the other affected customers and confirmation of the MF Global Inc. Net Equity Claim is significant in that regard.

#### **RELIEF REQUESTED**

52. The Trustee requests that this Honourable Court make an Order:

(a) declaring that:

- (i) MF Global Inc. is a “customer” of MF Global Canada, as that term is defined in section 253 of the BIA;
- (ii) the securities held by MF Global Canada for the account of MF Global Inc. in the Canadian Omnibus Account are not “customer name securities”, as that term is defined in section 253 of the BIA;
- (iii) the cash, securities and other assets, if any, held by MF Global Canada for the account of MF Global Inc. in the Canadian Omnibus Account are properly allocated to the “customer pool fund” of MF Global Canada under section 261 of the BIA;
- (iv) the MF Global Inc. Net Equity Claim is \$47,108,517.07 USD (\$47,942,337.82 CAD);
- (v) each of the SIPA Trustee and the Trustee shall have a period of 60 days from the date of a final order determining the MF Global Inc. Net Equity Claim to jointly reconcile the amount of each of the Collateral Recorded in the U.S. Omnibus Account and the Collateral Recorded in the Canadian Omnibus Account; and
- (vi) in the event that the SIPA Trustee and the Trustee are not able to jointly reconcile either the amount of the Collateral Recorded in the U.S. Omnibus Account and the Collateral Recorded in the Canadian Omnibus Account, such unreconciled amount shall be determined by the Ontario Superior Court of Justice (In Bankruptcy and Insolvency) (the “Court”) in accordance with a motion for directions by the Trustee to the Court to be conducted pursuant to a process (including as to timetable) to be agreed to between the SIPA Trustee and the Trustee or as directed by the Court.

[SIGNATURE PAGE TO FOLLOW]

ALL OF WHICH IS RESPECTIVELY SUBMITTED this 31<sup>ST</sup> day of January, 2012.

KPMG INC., in is capacity as trustee in  
bankruptcy of MF GLOBAL CANADA CO.

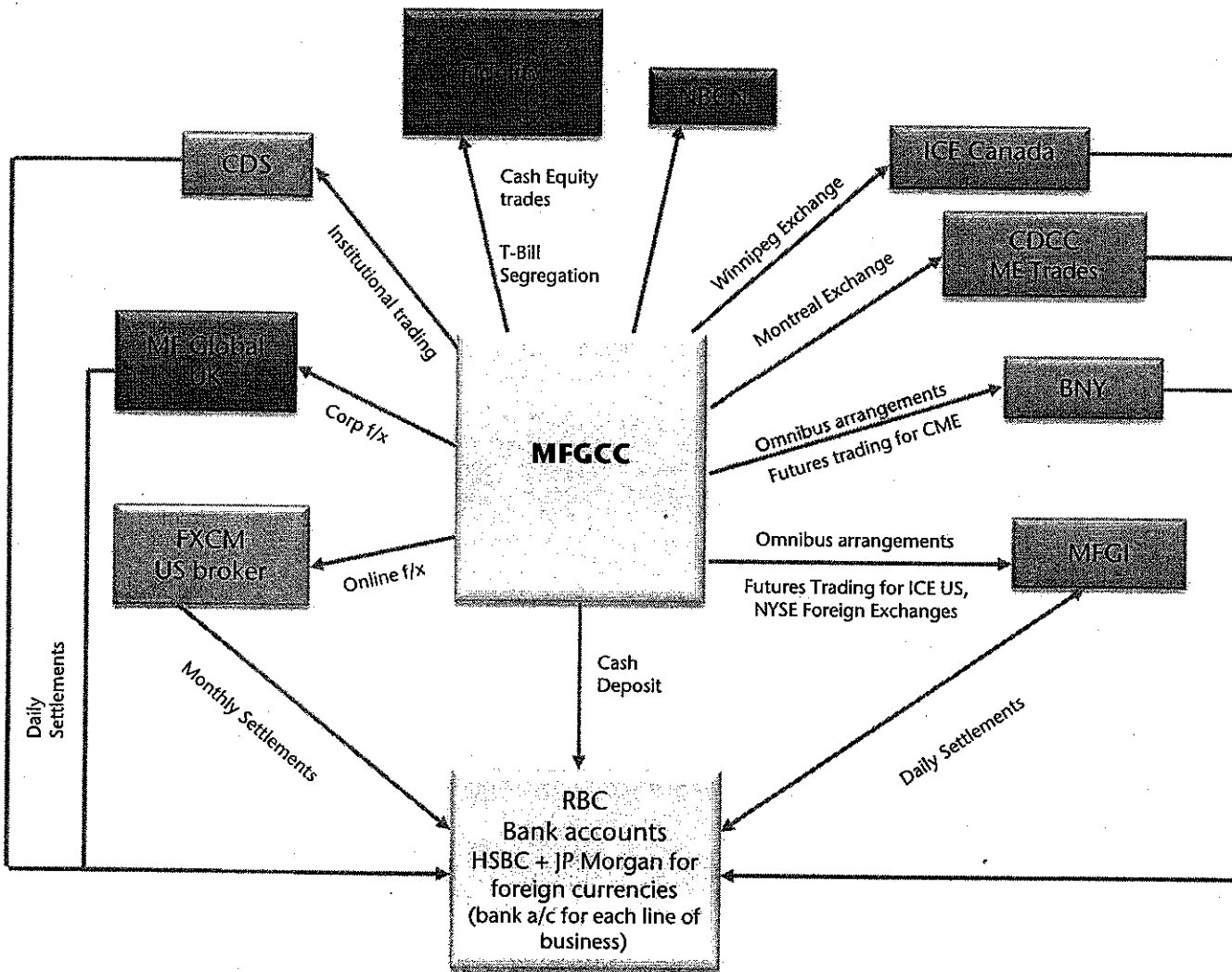


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Richard M. Harris  
Senior Vice President

TOR01: 4835655: v2

# **APPENDIX “A”**



Equity Business – recorded on Dataphile – Type 3 Fidelity (formerly at NBCN - \$250K deposit + 3 RRSP ac/s)
Futures Business – recorded on GMI system
Online f/x – recorded on FXT system
Corp f/x – recorded on R+N system
Institutional trading – recorded on CGI system

# **APPENDIX “B”**