

**STATEMENT OF LOUIS J. FREEH
BEFORE THE UNITED STATES SENATE
COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY**

AUGUST 1, 2012

Chairwoman Stabenow, Ranking Member Roberts, and Distinguished Members of the Committee:

My name is Louis J. Freeh and I am the Chapter 11 Trustee of MF Global Holdings Ltd., the ultimate parent of the entire worldwide enterprise commonly known as MF Global, and five of its subsidiaries, which I will refer to as the chapter 11 estates. Thank you for inviting me to submit a written statement to the Committee in connection with the hearing on August 1, 2012. I regret that a long standing, prior commitment prevents me from appearing in person at the hearing, and I truly appreciate our conversation, Chairwoman Stabenow, and your understanding in that regard. I welcome the opportunity to share with the Committee some of my observations as the trustee of the chapter 11 estates and to respond to any follow up questions for the record, as you have requested.

Prior to its collapse, the entities that comprised the MF Global enterprise, which I will refer to as the “MF Global Group”, employed 2,870 people and, through their regulated and unregulated broker-dealers and futures commission merchants, were some of the world’s leading brokers in markets for commodities and listed derivatives. The MF Global Group maintained operations in, among other countries, the United Kingdom, Australia, Singapore, India, Canada, Hong Kong, Japan and Taiwan, and these entities provided access to more than seventy exchanges globally. The MF Global Group was a leader by volume on many of the world’s largest derivative exchanges and, additionally,

was an active broker-dealer in markets for commodities, fixed income securities, equities, and foreign exchange.

The MF Global Group's priority was to serve the needs of its diversified global client base, which included a wide range of professional traders, corporations, sovereign entities, institutional asset managers and hedge funds, and financial institutions. The MF Global Group also offered a range of services for brokers and individual traders -- including farmers and ranchers.

Revenues were derived from three main sources: (i) commissions generated from execution and clearing services; (ii) principal transactions revenue, generated both from client facilitation and proprietary activities; and (iii) net interest income from cash balances in client accounts maintained to meet margin requirements, as well as interest related to the MF Global Group's collateralized financing arrangements and principal transactions activities. For fiscal year 2011, the MF Global Group generated total revenues of approximately \$2.2 billion, revenues net of interest and transaction-based expenses of approximately \$1.1 billion, and incurred a net loss of \$81.2 million.

In October 2011, everything changed. On October 31, 2011, MF Global Holdings Ltd. and MF Global Finance USA Inc. filed for bankruptcy under chapter 11 of the Bankruptcy Code; the Securities Investor Protection Corporation put MF Global Inc., the U.S. broker-dealer and futures commission merchant subsidiary of MF Global Holdings Ltd., into a SIPA liquidation proceeding and appointed Mr. James Giddens as the SIPA Trustee; regulated entities in the U.K. were put into administration; and other entities around the world began their own wind down proceedings.

As a result, entities that once operated as part of a global enterprise began to act as individual, independent entities, functioning separately with independent trustees or administrators at the helm. These trustees and administrators not only owe separate and distinct fiduciary duties to their respective entities and those entities' customers and creditors, but they are operating under competing bodies of law. Broadly speaking, for example, as the Chapter 11 Trustee I have a fiduciary duty to protect the interests of the creditors of the chapter 11 estates, which includes the financial institutions that provided MF Global with its \$1.2 billion revolving credit facility, and the bondholders of MF Global's publicly traded debt. My fiduciary duties do not extend to the former customers of the U.S. and U.K. broker dealers and futures commission merchants.

The SIPA Trustee's fiduciary duties, however, run to a broader constituency, which includes not only the customers of MF Global Inc., but the general creditors of MF Global Inc. – including the chapter 11 estates. Similarly, the administrators of the former U.K. broker-dealer subsidiary have fiduciary duties akin to that of the SIPA Trustee, as the U.K. administrators owe duties to both the former customers of the U.K. broker-dealer and the general creditors of that entity as well.

All of these factors work to the detriment of the customers and creditors of the various estates, and add to the administrative costs borne by the respective estates. There inevitably is unavoidable, significant delay associated with implementation by the various trustees and foreign administrators of the statutory processes governing the liquidation of their respective estates. This is not to say that the trustees and administrators are not working cooperatively. For example, my professionals and the SIPA Trustee's professionals often speak daily, have engaged in information sharing

calls, and are currently discussing coordinated efforts to assist one another in the administration of their respective estates. Indeed, we had a very productive meeting with the SIPA Trustee's advisers just last Thursday. We find this cooperation to be invaluable, if not essential. I believe that the interests of all stakeholders are best served through coordinated efforts to return funds to customers and creditors in the manner prescribed by law, whether that law is Chapter 11 of the Bankruptcy Code, the Securities Investor Protection Act, the CFTC rules or foreign law.

I would like to take a moment to address the subject of employees. The chapter 11 estates now employ 12 non-executive individuals and three remaining senior executives. This skeletal staff continues to serve an important function in the cost-efficient administration of the chapter 11 estates. As I said in my written testimony and statements made in response to questions from the Senate Banking, Housing and Urban Affairs Committee on April 24, 2012, no formal bonus program has been implemented nor will bonuses be paid to the executives or employees. This continues to be my position.

As stated in my June 4th report filed in the bankruptcy court, a copy of which is submitted with my written statement, the chapter 11 estates and non-debtor affiliates under my control filed 112 claims against various MF Global affiliates with a face value of between \$3.1 billion and \$3.3 billion. Of those claims, 68 were filed against MF Global Inc., with a face value of \$2.3 billion. Whether creditors of the chapter 11 estates will receive a significant distribution on their claims depends largely on whether the chapter 11 estates recover on their claims against MF Global Inc. And, ultimately, the

chapter 11 estates recovery on their claims against MF Global Inc. depends on MF Global Inc.'s ability to recover from counterparties and foreign affiliates.

Another potential source of recovery for the chapter 11 creditors is causes of action. At this time, I cannot go into further detail as to any potential causes of action or recoveries on those causes of action as I have not completed my investigation, which is statutorily mandated by Bankruptcy Code section 1106(a)(3). Upon completion of my investigation, I will issue a report with my findings. I can affirmatively say that I am investigating all potential parties and all causes of action that might be brought on behalf of the chapter 11 estates, as I am obligated to do.

To be clear, the various trustees and foreign administrators can and likely will assert different legal arguments to support their claims to property located throughout the world. The U.S. Bankruptcy Court and perhaps other courts will make those legal determinations. Notwithstanding court supervision of the wind-down of the chapter 11 estates and the liquidation of the SIPA estate, it is clear even at this early stage that the competing, and perhaps at times conflicting, obligations and duties of the various trustees and foreign administrators have had, and will continue to have, the effect of extending the length of time necessary for all of the estates to conduct their investigations, to determine the location and value of assets, to recover those assets, and ultimately to make distributions to customers and/or creditors.

There has been a great deal of publicity regarding the alleged shortfall in customer property, including media reports as recently as last week that referenced the disappearance of \$1.6 billion in customer funds, or a shortfall of \$1.6 billion in customer funds. It is my belief, however, based upon currently available public data in the United

States and reports issued by affiliates and administrators around the world, that -- whether from the return of funds from foreign administrations or settlements obtained by the SIPA Trustee from bank clearing houses, exchanges and trading counterparties -- all of the customers of MF Global Inc. eventually will be made whole by the SIPA Trustee. Further, this current data demonstrates that MF Global Inc. should have significant excess funds available after its former customers have been made whole for distribution to its general creditor claims class, which includes the chapter 11 estates' sizable claims against MF Global Inc.

The administration of these chapter 11 estates, together with the parallel work of the SIPA Trustee and that of the foreign administrators, makes this one of the most complex matters of its kind. The shared goal, however, is very simple: to recover every single dollar available, in the manner prescribed by law, for the benefit of every eligible customer and creditor, and not for those who brought about this historic collapse in the process.