



## NGFA's 116th Annual Convention

# Update on the Bankruptcy & Liquidation of MF Global Inc.

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Presented by

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# Disclaimer

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- ✓ This presentation was prepared for the NGFA's 116th Annual Convention to provide its members with an update regarding the ongoing liquidation proceedings of MF Global Inc. ("MFGI").
- ✓ This presentation is based on publicly available information and does not constitute legal advice or create an attorney-client relationship. Further, it is not meant to be relied upon by investors or other parties in interest.
- ✓ The information in this presentation is subject to change and may be updated based on the developments of the proceedings, including investigations by the Trustee. Arent Fox and NGFA reserve all rights with respect to this presentation.

**The Goal of Today's Presentation:** to provide information to assist with managing claims, risk mitigation, recovery, and anticipated distribution

## Introduction

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- ✓ \$1.6 billion gap between claims and assets
- ✓ Presently 72% has been distributed, with up to 80% to be distributed pursuant to the Motion for the First Interim Distribution
- ✓ Claims process is underway
- ✓ 4 Estates 3 Classes
- ✓ Final distributions across estates and classes will not be uniform

# Topics to Be Covered

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- I. Events Leading to Bankruptcy
- II. Bankruptcy Events
- III. Classification, Estates, Distributions
- IV. Potential Distributions Based on Class and Estates
- V. Claims Trading
- VI. Conclusion

## I. Events Leading to Bankruptcy

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- ✓ RTM generated regulatory oversight and disclosures
- ✓ FINRA demanded additional disclosures in August
- ✓ MF Global (Parent Co) largest quarterly loss disclosed
- ✓ Rating Agencies' downgrades (Moody's, Fitch and S&P)
- ✓ Shortfall in customer seg. funds occurred on October 26 (excess turns into deficit)
- ✓ CFTC came in on October 26
- ✓ Customer liquidation/withdrawals
- ✓ Seg. Funds "Accounting Error" flagged on October 29
- ✓ Shortfall confirmed on October 30
- ✓ Buyer back out
- ✓ October 31 SIPA Filing and Bankruptcy Filing

## II. Bankruptcy Events

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- ✓ Statutory Framework
- ✓ Trustee's Objectives and Duties
- ✓ Distributions
- ✓ Return of Customer Property: Bulk Transfers
- ✓ Claims Process – Bar Dates
- ✓ Claims' Review and Reconciliation
- ✓ Claims' Determinations
- ✓ Declaration, Release and Assignment

## II. Bankruptcy Events Statutory Framework

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- ✓ The collapse of MFGI gave rise to a commodities broker liquidation of immense scope and complexity
- ✓ MFGI was operating as both an FCM and Broker-Dealer
- ✓ James W. Giddens (the “SIPA Trustee”) is liquidating MFGI under the following statutes and rules:
  - 15 U.S.C. §§ 78aaa *et seq.* (the “SIPA”)
  - 11 U.S.C. §§ 761-767 (the “Bankruptcy Code Commodity Broker Liquidation Provisions”), applicable under the SIPA
  - 17 C.F.R. §§ 190.01-190.10 (the “Part 190 Regulations”) promulgated by the CFTC under 7 U.S.C. § 1 *et seq.* (the “Commodity Exchange Act”)



## II. Bankruptcy Events Trustee's Objectives and Duties

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- ✓ **Trustee's objective:** to return as much customer property as possible, as quickly as possible, in a manner that is fair to all customers and consistent with the law.
  
- ✓ **Trustee's duties:**
  - Liquidate MFGI and its business
  - Investigate transactions and determine sources of recoveries
  - Marshal assets and recover customer property
  - Review and determine claims of customers and creditors
  - Return property to the appropriate class of customers and creditors

## II. Bankruptcy Events Distributions

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- ✓ **Distributions to MFGI Customers may be made:**
  - by bulk transfers, if feasible and as approved by the Bankruptcy Court;
  - through an individual claims process; and
  - through return of “specifically identifiable property”, as the term is defined in Section 190.01(kk) of Part 190 Regulations and Section 761(10) of the Bankruptcy Code.
- ✓ **Total Distributions To Date:** \$3.9 billion, allowing the Trustee to maintain an adequate reserve of segregated customer property
- ✓ **Ultimate Distribution:** the ultimate distribution is dependent upon the amount of assets available in each class of customers and the size of the allowed claims pool

## II. Bankruptcy Events

### Return of Customer Property: Bulk Transfers

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First Bulk Transfer “Open Positions”	Second Bulk Transfer “Cash Only Accounts”	Third Bulk Transfer “True Up”
<p>November 2</p> <p>10,202 commodity accounts</p> <p>\$1.519 billion in margin</p> <p>3 million open positions</p> <p>\$250 million CME guarantee</p>	<p>November 17</p> <p>60% of the cash attributable to 15,148 commodities accounts holding only unencumbered cash or cash equivalents in their accounts on October 31</p> <p>\$477 million</p>	<p>December 9</p> <p>“true up” all U.S. commodity futures customers up to 72%</p> <p>\$1.832 billion transferred to customers with U.S. futures positions</p> <p>\$300 million CME guarantee</p>

## II. Bankruptcy Events

### Claims Process – Bar Dates

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- ✓ On November 22, 2011 – approval of parallel customer claims processes for commodities and securities customers and a separate claims process for MFGI's general creditors
  
- ✓ **Bar Dates:**
  - ✓ Customer Claims must be received by the Trustee on or before January 31, 2012.
  - ✓ Creditor Claims must be received on or before June 2, 2012
  
- ✓ If received by the Trustee after January 31, 2012, but on or before June 2, 2012, a commodity futures customer claim may be afforded general creditor status

## II. Bankruptcy Events - Claims Process Claims' Review and Reconciliation

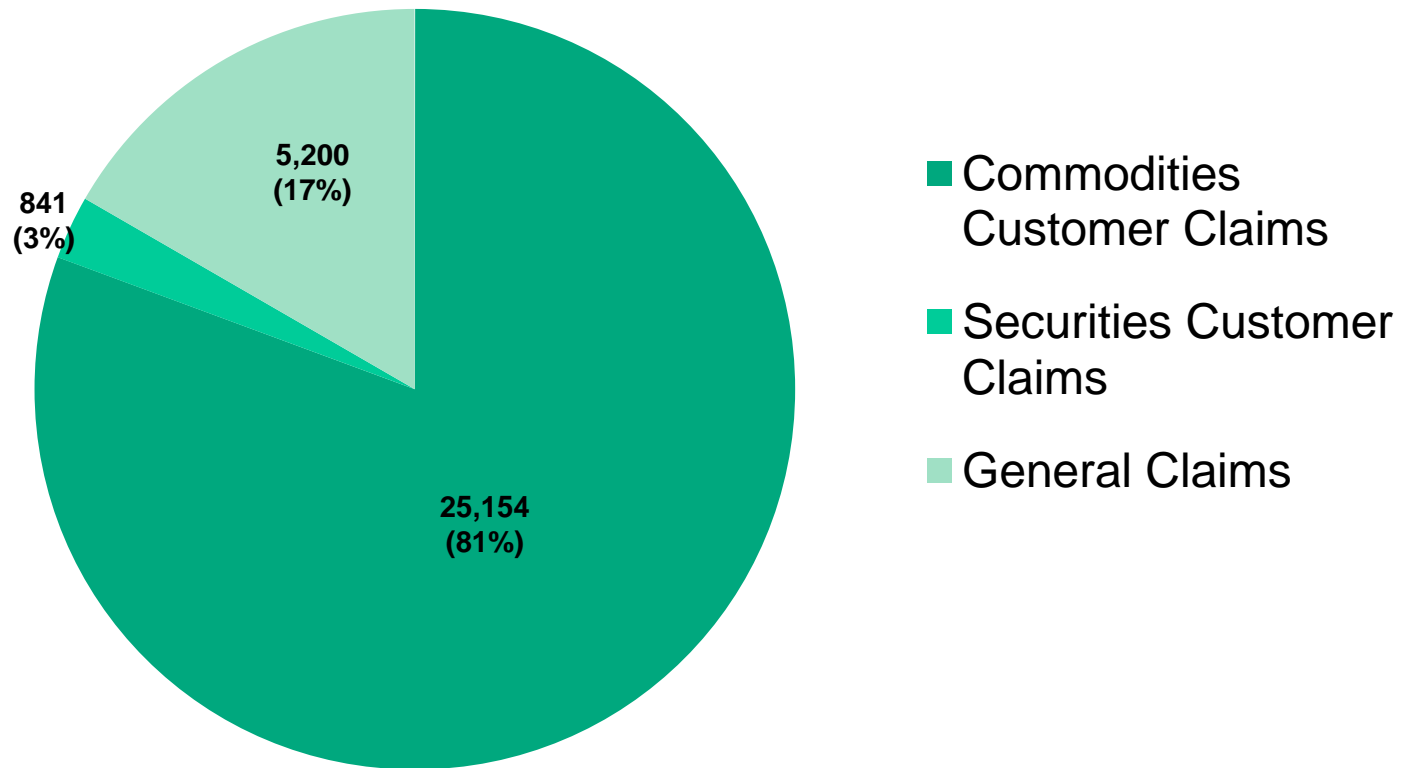
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- ✓ 25,154 commodities customer claims filed
- ✓ Trustee determined 12,146 claims by March 1, 2012
- ✓ 12,143 claims allowed; 3 claims denied
- ✓ 98% is the average amount allowed on a customer claim
- ✓ Electronic registry of claims filed available at:  
<http://dm.epiq11.com/MFG2/Project/default.aspx>

## II. Bankruptcy Events - Claims Process Overview of Claims Filed

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### Claims Filed (total of 31,195 as of March 2, 2012)



## II. Bankruptcy Events - Claims Process Claims' Determination

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- ✓ Letters of Determination, along with a Declaration, Release and Assignment form, is sent to client upon determination of a claim
- ✓ The Trustee's claim determination is final, unless objected to within 30 days of the date of the letter
- ✓ If you disagree with the Trustee's determination, you must file and serve a written opposition
- ✓ If you agree with the Trustee's determination, you should complete and return a Declaration, Release and Assignment form
- ✓ If you have any questions, you may call the Trustee's **Determination Call Center Hotline at 888-643-2169 (inside the United States) or 212-837-6038 (outside the United States)**

## II. Bankruptcy Events - Claims Process Declaration, Release and Assignment

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- ✓ The form contains extraordinary provisions:
  - ✓ Submitted under penalty of perjury
  - ✓ Broad scope of releases granted
  - ✓ Released persons: (i) Trustee and his agents, employees, professionals, successors, and assigns; (ii) SIPC and its agents, employees, officers, directors, professionals, successors, and assigns; (iii) MFGI estate
  - ✓ Release from liability on account of all claims or causes of action arising out of or relating to the Claim, the circumstances that gave rise to the Claim, any other transactions or dealing with MFGI, or any entity or other person affiliated with MFGI relating to the Claim



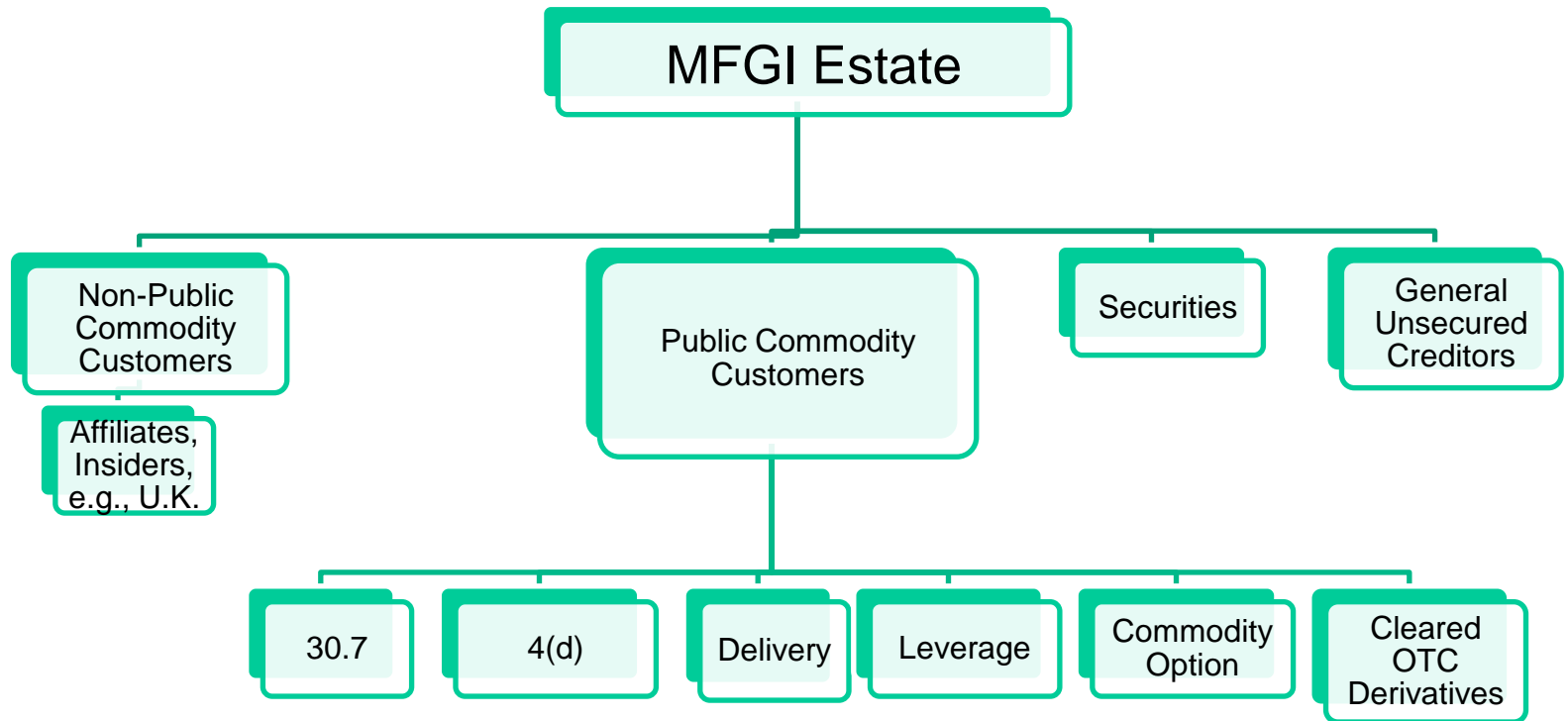
## II. Bankruptcy Events - Claims Process Stipulation re Declaration, Release and Assignment

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- ✓ Multiple objections raised and filed based on the broad release provisions
- ✓ A settlement was reached between a group of customers and the SIPA Trustee (the “Stipulation”) regarding the scope of releases granted under Declaration, Release and Assignment
- ✓ Stipulation was entered into and filed for approval by the Bankruptcy Court to be heard on March 20, 2012
- ✓ March 19, 2012 is the deadline for filing an objection to approval of the Stipulation

### III. Classification, Estates, Distributions Structure of Claims Pool at MFGI

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### III. Classification, Estates, Distributions 4d Customers

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✓ Current Estimate of Total 4d Claims:	\$5.9 – 6 billion
✓ Total Assets Marshaled:	\$5.283 billion
✓ Total Distributions to Date:	\$3.828 billion
✓ Assets Remaining Under Trustee Control:	\$1.455 billion
✓ Percent of Total Assets Distributed (Bulk Transfers I-III):	up to 72%
✓ Percent of Property Remaining After Bulk Transfers:	28%
✓ Motion for the First Interim Distribution:	\$600 million
✓ After the additional interim distribution:	up to 80%

### III. Classification, Estates, Distributions Customers with Physical Assets

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- ✓ \$100-130 million in physical assets (warehouse receipts and other certificates of title for various agricultural commodities and precious metals) held at MFGI as of October 31
- ✓ First *pro rata* distribution to the customers holding physical assets was approved under the Third Bulk Transfer
- ✓ The Trustee seeks to sell remaining physical assets to Jefferies yielding \$14.5 million
- ✓ \$35 million in additional distributions is sought under the Motion for First Interim Distribution
- ✓ Separate “delivery account” class for purposes of pro rata distribution to “reduce the dilution effect of proration without offending the basic principle of proration of equivalent claims.” See Memorandum Opinion and Order, dated March 7, 2012 at [ECF No. 998] (discussing legal standards for distribution of physical property).

## III. Classification, Estates, Distributions

### 30.7 Customers

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- ✓ \$878.8 million in 30.7 customer obligations as of Oct. 31
- ✓ \$63.55 million recovered
- ✓ \$815.25 million deficit in 30.7 customers obligations
- ✓ No distributions to date
- ✓ \$50 million sought to be distributed under the Motion for the First Interim Distribution

### III. Classification, Estates, Distributions Securities Customers

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- ✓ \$488 million in estimated securities customer obligations:
- ✓ 318 active retail securities accounts were sold to Perrin, Holden & Davenport Capital Corp.
- ✓ 841 securities customer claims were filed
- ✓ Nearly all securities customers have received 60% or more of their account value
- ✓ 194 securities customers have received 100% of their account value because of SIPC guarantee
- ✓ There still may be a shortfall to the securities customers

### III. Classification, Estates, Distributions General Unsecured Creditors

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- ✓ \$290.43 million in total general estate assets in Trustee's possession
- ✓ 5,200 general claims filed by March 2, 2012
- ✓ Potential recoveries include avoidance actions
- ✓ If the value of the general estate reaches substantial size, the Trustee may seek authority to reallocate some amounts from the general estate to customers, subject to Court approval

### III. Classification, Estates, Distributions Non-Public Customers

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- ✓ MF Global Holdings Limited
  
- ✓ MF Global U.K. Limited and Other Former Foreign Affiliates
  - Trustee has active discussions with the foreign special administrators in attempt to resolve this issue.
  - Trustee holds the largest creditor claim and the largest client claim in the U.K. proceeding. Trustee maintains that all funds held by MF Global U.K. Ltd. should be returned.
  - Trustee actively sought and secured a seat as a client representative on the creditors' committee of MF Global U.K. Ltd.
  - Special administrators have asserted claims against MF Global Inc., including an omnibus claim on behalf of MF Global U.K. Ltd. customers, of over \$200 million.



## IV. Potential Distributions Based on Class and Estate

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### ✓ **Public Customers Estate:**

- 4(d) Class - \$3.9 billion distributed by the SIPA Trustee to date, additional \$600 million - **up to 80%**
- Physicals or Delivery Class – up to 72% through 3<sup>rd</sup> bulk transfer, \$35 million in addition; plus unknown yield from Jefferies sale - **over 80%**
- 30.7 Class - \$50 million for the first time – **up to 5.69%**

### ✓ **Non-Public Customers Estate:** litigation is forthcoming

### ✓ **Securities Customer Estate:** 194 securities customers got 100%; nearly all securities customers got 60% or more

### ✓ **General Unsecured Creditors Estate:** claims process is underway, claims bar date is June 2, 2012

## V. Claims Trading

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- ✓ Customer should make an independent evaluation of whether to enter into a claims trade
- ✓ The SIPA Trustee neither encourages nor discourages claims trading
- ✓ Properly transferred claim merely provides the transferee with the right to pursue distributions on account of such claim, subject to the SIPA Trustee's determination of the validity, amount and priority

## VI. Conclusion

### Resources and References

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- ✓ NGFA: <http://www.ngfa.org/>
- ✓ MFGI SIPA Trustee:  
[http://dm.epiq11.com/MFG/Project/default.aspx#Section4\\_1](http://dm.epiq11.com/MFG/Project/default.aspx#Section4_1)
- ✓ CFTC: <http://www.cftc.gov/index.htm>
- ✓ SIPC: <http://www.sipc.org/>
- ✓ SEC: <http://www.sec.gov/>
- ✓ U.S. Senate – Committee on Agriculture, Nutrition and Forestry:  
<http://www.agriculture.senate.gov/>
- ✓ U.S. House of Representatives - Committee on Financial Services: <http://financialservices.house.gov/>
- ✓ U.S. Bankruptcy Court: <http://www.nysb.uscourts.gov/>
- ✓ Office of the United States Trustee – Region 2:  
<http://www.justice.gov/ust/r02/>