

**STATEMENT OF LAURIE FERBER
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES
OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE**

MARCH 28, 2012

Chairman Neugebauer, Ranking Member Capuano and Distinguished Members of the Subcommittee:

My name is Laurie Ferber. Since June 2009, I have served as the General Counsel of MF Global Holdings Limited (“Holdings”), the parent company of MF Global Inc., a U.S. registered broker-dealer and futures commission merchant.

Upon the bankruptcy filing of Holdings, on October 31, 2011, I initially served as part of the management team of the Debtor-in-Possession. Since the Bankruptcy Court’s approval, on November 28, 2011, of the appointment of the Honorable Louis Freeh as Trustee for Holdings, I have remained at the company to assist the Trustee and the bankruptcy professionals in their efforts to maximize the value of the Holdings estate. During this period, I have been working very hard to help the Trustee in the difficult task of dealing with the terrible situation created by the company’s demise.

Today, I am appearing at the request of the Subcommittee, and I hope that my testimony will assist the Subcommittee in its effort to understand what happened at MF Global during the firm’s final days.

I. BACKGROUND

I was born and raised in the Bronx, New York. In 1973, I received a bachelor’s degree from the State University of New York at Buffalo. In 1980, I graduated from New York University School of Law. From 1980 to 1983, I was an associate at the law firm Skadden, Arps,

Slate, Meagher & Flom LLP, and from September 1983 to December 1985, I was an associate at the law firm Schulte Roth & Zabel LLP, both in New York City. In January 1986, I became the General Counsel of Drexel Burnham Lambert Trading Company, the commodities trading affiliate of Drexel Burnham Lambert. After about eighteen months, I moved to Goldman Sachs in 1987, initially as general counsel of J. Aron & Company, Goldman Sachs' commodities trading division. Upon the merger of the J. Aron and Fixed Income divisions, I became co-general counsel of Goldman Sachs' Fixed Income, Currency and Commodities Division. I remained at Goldman Sachs for just over twenty-one years, serving from 2000 on in a number of business roles.

In late 2008, I left Goldman Sachs and in February 2009 became the General Counsel of the International Derivatives Clearing Group, a newly formed central clearinghouse for interest rate swaps. I was at IDCG for about two months before being approached by MF Global. I was hired as MF Global's General Counsel in June 2009 and continued in that capacity through the filing of the bankruptcy petition on October 31, 2011.

From June 2010 through March 2012, I served on the Board of Directors of the Futures Industry Association. Since March 2002, I have been a Trustee of the Institute for Financial Markets, an affiliate of the Futures Industry Association, which focuses on education, ethics and the provision of data, and serves as a source of unbiased and balanced information important to the brokerage industry and those who shape public policy related to it. Since the filing of the bankruptcy petition, I have remained at MF Global to assist the Trustee to maximize the value of the firm for the benefit of all stakeholders.

II. RESPONSIBILITIES AT MF GLOBAL

As General Counsel, I supervised the legal and compliance functions of MF Global and had administrative responsibility for the firm's internal audit function. My responsibilities included managing the legal function to support the firm's evolving business, advising the Board and senior management, and facilitating MF Global's relationships with its regulators.

Until October 31, 2011, when the firm filed for bankruptcy, MF Global was one of the world's leading brokers of commodities and listed derivatives. The firm delivered trading and hedging solutions as a broker-dealer across all major markets for futures and options, commodities, fixed income, equities and foreign exchange. MF Global operated in twelve countries and provided access to more than seventy exchanges around the world. In February 2011, MF Global was designated by the Federal Reserve Bank of New York as a primary dealer in U.S. Treasury securities.

Consequently, MF Global's Legal Department was called upon to provide legal services, either directly or in conjunction with outside counsel, across many jurisdictions and legal disciplines. The Legal Department included approximately seventeen attorneys and twelve staff. These professionals had experience in many areas of law, including securities, broker-dealer and futures regulation, corporate governance, litigation, contracts, intellectual property and human resources. The firm's legal team was supported in the performance of its legal functions for MF Global by several highly skilled outside law firms with expertise in various areas of law pertinent to MF Global's operating businesses and its obligations as a public company. The general counsels of MF Global's international offices in Europe and Asia also possessed the expertise, in conjunction with external counsel, necessary to support the firm's operations in the foreign jurisdictions where MF Global conducted business. In addition, the Global Head of Compliance,

who had substantial experience and expertise in compliance matters and managed a global department of over eighty people, reported directly to me. Finally, the Head of Internal Audit reported functionally and directly to the Chairman of the Audit and Risk Committee of the Board of Directors, and operationally and administratively to me.

I reported directly to the Chief Executive Officer of MF Global and interacted directly with the Board of Directors.

III. THE FINAL DAYS

My focus during the last week of MF Global's operations was to make sure the Legal and Compliance Departments and outside counsel were available and prepared to support the firm as it attempted to deal with the rapidly unfolding events of MF Global's last days. These events included a variety of stresses resulting from reactions to MF Global's deteriorating circumstances. The firm's senior management and Board attempted to react to these stresses by, initially, seeking to sell all or part of the firm and severely reducing its balance sheet while also seeking to make sure that the firm met all of its obligations. Ultimately, when the sale of the firm became impossible, Holdings had no viable option other than to file for protection under the Bankruptcy Code.

During this period, I, together with other members of the Legal Department and outside counsel, provided legal advice and assistance to help the Board and management fulfill their responsibilities. Primary among these were efforts to sell the firm and keeping the regulators, exchanges, and other appropriate constituencies informed. I also dealt with various specific legal issues as they arose during this chaotic last week.

During MF Global's final days, I and other members of the Legal Department were constantly available to provide legal support. I personally was in MF Global's offices in New York for all but a very few hours throughout the final weekend, as were many members of MF

Global's senior management. I was in very frequent contact with my colleagues in other MF Global offices. The Board of Directors was also present at MF Global's offices in New York throughout most of the weekend, carefully monitoring events and receiving almost constant updates. In addition, my colleagues and I were in very frequent contact with various regulators, including the CME, the CFTC, the SEC, the CBOE, FINRA, the Federal Reserve Bank of New York, and the Financial Services Authority, the regulator of the financial services industry in the United Kingdom. Representatives of the CFTC and the SEC were physically present in our offices in New York and/or Chicago for substantial parts of the weekend, and we were in telephone communication with senior-level regulators in Washington and Chicago. I also frequently consulted with external counsel as events escalated throughout this period, and several of their senior lawyers were on-site to support our efforts.

What follows is my best recollection of the events of MF Global's final days. I have attempted to refresh my recollection by reviewing pertinent documents when available.

As background, I note that during the week of October 17, 2011, senior management informed the three major rating agencies that the firm expected to report a substantial loss for the firm's second fiscal quarter ended September 30, 2011. It was reported to me that two of the agencies, Standard & Poor's Ratings Services and Fitch Ratings Group, did not indicate that they planned to take any action. The third agency, Moody's Investors Services, notified senior management on Friday afternoon that it would review its rating for MF Global at a committee meeting the following Monday.

On Monday, October 24, 2011, Moody's announced a downgrade of MF Global's debt rating to Baa3, one notch above junk-bond status. The firm also announced that it would release earnings the following morning, two days ahead of schedule. These events obviously required

additional legal support to prepare for the accelerated earnings announcement and reactions to the downgrade.

On the morning of Tuesday, October 25, 2011, the firm released its earnings report showing a loss of \$191.6 million for the period. It also issued a press release and made the necessary regulatory filings. By Tuesday's close, MF Global's shares declined by 48% from the prior day's close. At some point during this period, senior management opened discussions with Evercore Partners, Inc. to consider a possible sale of all or part of the firm. By that afternoon, we started to receive and to respond to increased inquiries from the CME and other exchanges and regulators about the status of MF Global.

By Wednesday, October 26, 2011, the Legal Department was responding to an increased variety and number of legal questions arising out of these events, including inquiries from regulators and customers. I participated in several Board update calls that took place throughout the day. I also received a call from a representative from the SEC who informed me that the SEC wanted to meet with management the following day to discuss various issues, including liquidity and funding, and that the CFTC would also attend and would focus on segregated funds calculations.

That evening, MF Global formally retained Evercore to assist with efforts to sell all or part of the firm. I continued to consult with outside counsel concerning the legal work that would be necessary in order to deal with possible developments, including the possible sale, as well as potential bankruptcy issues.

On Thursday, October 27, 2011, Fitch and Moody's downgraded MF Global's debt rating to junk-bond status.

Throughout the day, we continued to have contact with our regulators, including the CME, the CFTC, the SEC, FINRA, the CBOE and the FSA, as well as the Federal Reserve Bank of New York.

That morning, I, along with other MF Global representatives, participated in a telephone call with representatives of the CFTC to update them on the situation. At approximately 2:00 p.m., as requested the previous day, management and other members of the finance team met with representatives of the SEC and the CFTC at MF Global's offices in New York. The MF Global team made a presentation concerning recent events and the firm's liquidity situation. Following the meeting, a smaller team of legal, compliance and finance people met with the SEC to discuss the logistics of the examination planned for the following week.

Although I do not believe I knew it at the time, that same afternoon representatives of the CME arrived in the firm's Chicago office to conduct an audit of the daily segregation report as of the close of business on October 26, 2011. I now understand that the audit did not uncover any problems. Certainly, I was not notified at the time of any issues with the firm's segregated funds accounts.

On Friday, October 28, 2011, I spent most of the morning at Evercore's offices participating in and facilitating the due diligence process, including arranging meetings between various MF Global employees and a potential buyer of the firm, and continued this throughout the afternoon from both our offices and Evercore's.

In the afternoon, two representatives of the SEC arrived at MF Global's New York office. I set them up in an office, where they worked intermittently throughout the following two days until the bankruptcy filing.

Also that afternoon, Mr. Corzine asked me to review a compliance certificate that JPMorgan Chase had requested concerning wire transfers made that morning from customer segregated accounts. The proposed certificate stated that all transfers made by MF Global—past and future—complied with, and would comply with, applicable segregation rules. Although I had no reason to believe that any non-compliant transfers from segregated accounts had occurred or would occur, I did not think that any individual officer or employee should be asked to issue such a broad certificate unless that employee personally had handled all such transfers or was able to review all the transactions within the available timeframe. I also questioned the propriety of such an affirmative representation about future events.

I spoke to representatives of JPMorgan to find out what they needed. I was told that, despite the broad language in the proposed certificate, JPMorgan was specifically interested in two transfers that had occurred that morning: (1) a \$200 million transfer from an MF Global Inc. customer segregated funds account to a house account on the broker-dealer side of MF Global Inc. and (2) a subsequent \$175 million transfer from that house account to a MF Global UK Ltd. account at JPMorgan. I told the JPMorgan representatives that the language of the proposed certificate was overly broad because it referred to “all transfers and withdrawals made or to be made” out of any customer segregated account. I understood that JPMorgan would try to narrow the language of the certificate. I then spoke to the person in Chicago whom JPMorgan identified in the certificate and was given the understanding that she would sign the certificate if it were limited to the two transactions that the bank had expressed an interest in.

In the evening on October 28, I received a revised draft of the proposed certificate from JPMorgan. Although the language of the letter was narrower, it was still too broad because it sought certification for prospective transfers and for every transfer that had occurred on October

28th. The revised language referred to “all transfers and withdrawals made on or after October 28, 2011.”

During Saturday, October 29, 2011, I spent much of my time working on the sale of all or part of the firm, which I understood to be the primary objective of management and the Board, and a priority for our regulators. These efforts continued to include facilitating the due diligence efforts by potential buyers, preparing legal papers and necessary filings, and helping to ensure that the regulators—particularly the CME, the CFTC, and the SEC—received the information they would need to approve a sale and to facilitate the transfer of customer accounts. I was in frequent contact with representatives of the CME, the SEC, and the CFTC to keep them updated on MF Global’s situation.

The Board of Directors convened in the late afternoon for an educational session with outside counsel, to make sure that they were prepared for any decisions they would be required to make as events unfolded.

On Saturday afternoon, I also had a short conversation with lawyers for JPMorgan concerning its requested certificate. I told the lawyers that the language of the revised draft certificate JPMorgan had provided the night before was still too broad and that if they narrowed the certificate to the two transactions, I thought we could get it signed. A few hours later, JPMorgan sent a revised certificate to me and another member of the Legal Department who had participated in that afternoon’s call with JPMorgan and was interacting with both the officer in the Chicago office and JPMorgan’s counsel. This additional revised certificate referred to “the transfer and withdrawal made on October 28, 2011 in the amount of \$200,000,000 . . . out of such Customer Segregated Account to a proprietary account of MF Global Inc. and the subsequent transfer to the MF Global UK Ltd. account . . . for the purpose of covering overdraft

amounts in accounts with J.P. Morgan” Having obtained a certificate that I considered to be in satisfactory form, I turned this matter over to my Legal Department colleague. I do not recall further involvement with this issue.

Beginning at approximately 11:00 p.m. that evening, I participated in a long conference call with various MF Global executives and CFTC representatives to update them on the status of MF Global’s efforts to sell the firm and to address their inquiries with respect to the customer segregated accounts.

At approximately 4:00 a.m. on Sunday, October 30, 2011, I provided an update to a representative of the CFTC. I informed him that the firm was planning to conduct a series of auctions beginning at 7:00 a.m. for most of the firm’s remaining balance sheet of securities, including the European sovereign debt, with the goal being to convert the firm’s balance sheet almost entirely to cash. I also provided additional details concerning the firm’s ongoing active discussions with a potential buyer, indicating that we would need regulatory assistance to complete the sale if all terms were agreed upon.

At 9:00 a.m., the Board of Directors convened for a meeting that continued, with a number of recess breaks, through Monday, October 31 at approximately 2:00 p.m. At this point, the primary focus of the Board was to sell the firm.

At 10:00 a.m., inside and outside counsel participated in a conference call at the CFTC’s request concerning MF Global’s bankruptcy contingency plan.

Early that afternoon, I was copied on an email from a member of the finance team in Chicago indicating that the preliminary October 28, 2011 daily summary of the segregated customer account reflected a \$952 million deficit. Shortly before 3:00 p.m., I was copied on another email indicating that the gap in the segregated accounts may be \$3 million. I do not

recall when I saw these emails, but I understood that the finance team was looking for an adjustment and support to eliminate the deficit. That afternoon, I had been informed that the CFTC's Chicago Audit Branch Chief was on her way to our Chicago office and that a Team Leader from the CFTC's New York office was en route to our office in New York. Throughout that afternoon, I received information that members of our finance team were working with regulators in MF Global's offices to provide requested information and that the finance team and others were working to reconcile the segregated funds account information, including looking for an adjustment and support to eliminate the deficit. My impression throughout the afternoon and late into the evening was that the apparent deficit was a reconciliation issue and did not represent an actual shortfall in customer funds.

Meanwhile, the firm had reached preliminary terms of agreement with one potential buyer, and shared those terms with regulators. From approximately 7:00 p.m. to 10:00 p.m. that evening, off and on, I participated in a conference call with representatives of the SEC, the CFTC, the FSA, and other regulators to discuss the terms of the proposed sale and the additional terms the regulators were requesting in order to gain their approval of the sale. We also discussed MF Global's proposed press release announcing the sale and addressed other lingering regulatory issues. After those discussions, I contacted the potential buyer's general counsel to confirm their agreement to the additional points the regulators required to be included in the terms of agreement and minor modifications to the press release. Meanwhile, outside counsel and other members of the Legal Department worked with the CFTC to secure its formal approval of the sale and transfer of the accounts.

Late that evening, I learned that the Board had been notified that our employees had been unable to resolve the apparent deficit in the customer segregated accounts. At this time, my

impression was still that the shortfall was likely due to a reconciliation discrepancy. Shortly before midnight, I learned that it appeared that the firm might not be able to reconcile the segregated funds accounts. At the potential buyer's suggestion, experienced personnel from the potential buyer worked for a brief time with members of MF Global's finance and operations divisions to "provide a fresh set of eyes" to help identify potential reconciliation errors in the accounts.

At approximately 2:00 a.m., on October 31, 2011, I, together with executives of MF Global and MF Global's outside counsel, participated in a conference call with representatives from various regulatory agencies, including the SEC, the CFTC, the FSA, the CME, and the Federal Reserve Bank of New York, to inform them that the apparent deficit in the segregated funds account had not been resolved and that it appeared that it would not be resolved in time to accomplish the sale that evening.

The call lasted until approximately 6:30 a.m., with MF Global intermittently excused and then asked to rejoin the call. Early in the morning, the Board of Directors voted to place Holdings into bankruptcy. However, prior to filing the bankruptcy petition, the company waited, with the agreement of the regulators, until the Fedwire opened in the morning to see if house trades settled so that MF Global could use available cash and collateral to fill the gap in segregated funds. However, when the Fedwire opened at 8:30 a.m. on the morning of October 31, it became apparent that banks and others were not settling trades or moving money to MF Global accounts.

At 10:24 a.m., counsel for Holdings filed a petition for protection under Chapter XI of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York.

I will try to answer any questions you may have.

United States House of Representatives
Committee on Financial Services

"TRUTH IN TESTIMONY" DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name: Laurie R. Ferber	2. Organization or organizations you are representing: Individual Capacity
3. Business Address and telephone number: 	
4. Have <u>you</u> received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify? ☐ Yes ☒ No	5. Have any of the <u>organizations you are representing</u> received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify? ☐ Yes ☒ No
6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets. 	
7. Signature: 	

Please attach a copy of this form to your written testimony.