THE COLLAPSE OF MF GLOBAL, PART 3

HEARING

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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WITNESSES

WEDNESDAY, MARCH 28, 2012

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

THE COLLAPSE OF MF GLOBAL, PART 3

Wednesday, March 28, 2012

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 3:02 p.m., in room 2128, Rayburn House Office Building, Hon. Randy Neugebauer [chairman of the subcommittee] presiding.

Members present: Representatives Neugebauer, Fitzpatrick, Pearce, Posey, Hayworth, Renacci, Canseco, Fincher; Capuano, Lynch, and Waters.

Ex officio present: Representative Bachus.

Also present: Representative Royce.

Chairman NEUGEBAUER. This hearing will come to order. I would remind Members that the opening statements will be limited to 10 minutes on each side, as previously agreed.

There are Members who may attend this hearing who are not members of the Oversight and Investigations Subcommittee, and I ask unanimous consent that those Members be allowed to participate in the hearing today, as well.

I am going to go ahead with my opening statement. This is the third hearing that we have had on MF Global. This hearing is about the 8th largest bankruptcy in the history of this country, but more importantly, it is about trying to ascertain what happened where farmers and ranchers and customers lost over a billion dollars worth of their money.

I would remind folks that this is a hearing and not a trial, in that the bottom line of what we are trying to accomplish today is basically to do an autopsy on how a 228-year-old company came to its demise last year.

It is important that we understand what was going on corporately, what was going on from a regulatory standpoint, and really what was going on within the systems that support this entity and these businesses. The reason that is important is that, obviously, there was a breach and people lost their money.

But, more importantly, it is going to be important for us to make sure that whatever deficiencies happened, that corrective actions are taken so that customers and farmers and ranchers who use these kinds of services in the future have confidence in those markets.

We have looked at different aspects of this—of the last days and months and years of MF Global and, today, this hearing will be fo-

cused on the last days of MF Global, and ascertaining how and when and why farmers and ranchers and customers lost their money.

And so, I appreciate the witnesses being here today. I appreciate my fellow committee members. And I hope that when we complete this hearing today, we will have a better understanding of what happened and, more importantly, how we can prevent these kinds of things from happening in the future.

And so, with that, I yield to the ranking member, Mr. Capuano, for his remarks.

Mr. CAPUANO. Thank you, Mr. Chairman, and thank you for having this hearing. And I want to associate myself with all the comments you just made; that is exactly what I am doing.

I have approached this—I am not looking for someone who stole money. If somebody stole money, the Justice Department will find them. That is their role, not our role, as I see it.

I see our role as trying to find out what happened in order to make sure that it doesn't happen again, to see if there are rules that need to be clarified, to see if there are accounting principles that need to be clarified, whatever it might be. Or, if there is criminal wrong-doing, well then, just to encourage the proper authorities to do their job, not necessarily us.

But I also want to talk today about some of the events that led up to today's hearing. I think it was pretty well known that there were some news stories last week that were based on a memo that was leaked inappropriately.

I have spoken to the chairman about it. We agreed that was—things happen unintentionally, so be it. It is done. And I actually want to congratulate the chairman for the addendum to the memo to clarify that position.

I think it took a lot of good wisdom and a lot of courage and a lot of foresight to do that, and it was well-written and, I think, right to the point.

But I also want to make sure—and the chairman and I have talked and I think we both agree. I want to be clear that I am on the record to say that up until now this subcommittee, in my opinion, has worked very well.

I have a good relationship with the chairman. I don't know that we—I am sure we have differences of opinions on certain matters, but not to the approach of this committee.

We have a responsibility and we are doing it and we are going to continue to do it, but it has been done mostly in a bipartisan and in a cooperative manner.

This incident last week raised some issues with some of my Members on my side—I think legitimate issues. I have raised them with the chairman. I think they are worked out. I believe they are worked out.

But I want to be clear that, as we go forward, material of the committee belongs to the committee. It does not belong to a Member. Material of the committee is required, by House Rule 11, to be shared amongst all members equally. Equally.

It is not subject to the determination of staff or any other Member what to do with that material. And again, I think that things

this week were inadvertent and that is fine. Things happen and you clear them up.

But I want to be clear that, going forward, I expect that every person who works for or with this committee or other Members who serve with this committee will try to work in a cooperative manner, knowing full well that there will come a time when we have differences of opinion and we will express them appropriately and viciously and vociferously and all the other ways that we do.

But as far as information, as far as trying to get to the bottom of this and other matters, the Oversight Subcommittee's job is to protect the American people. We may have different views on how to do that, but I don't think any of us disagree on that responsibility.

And with that, Mr. Chairman, I want to thank you for the conversations we have had to try to clarify some misunderstandings this week, and I look forward to working with you in the future.

Chairman NEUGEBAUER. Yes, and I want to say that I appreciate the ranking member and I appreciate his cooperative spirit.

I think this committee, quite honestly has—I agree with him—worked in a very bipartisan way because ultimately, we work for the American taxpayers.

They give us the responsibility to oversee markets and entities and I know he takes this as seriously as I do. And so, I thank him for his remarks.

Now, I yield to the chairman of the full committee, Mr. Bachus, for 10 minutes.

Chairman BACHUS. Thank you, Chairman Neugebauer, for convening this hearing to examine events in the tumultuous final days of MF Global. I commend you for the subcommittee's continued careful and comprehensive review of the facts.

Through two hearings, this being the third, there have been dozens of interviews by the staff, reviews of thousands of pages of documents which—and those documents, as they came in, Members were notified that they were here, but maybe we can improve that communication.

But the Oversight and Investigations Subcommittee and the full Financial Services Committee have sought to find out what led to the loss of $1.6 billion in customer funds.

We need to understand what happened at MF Global, both for the benefit of ranchers and farmers who lost money, as well as the American public which benefits from a properly and effectively functioning commodity market.

What we learned to date is that, notwithstanding the promise of the Dodd-Frank Act, regulators do not work together. There is very little evidence of regulatory coordination in the supervision of MF Global.

In fact, FINRA, some 4 or 5 months before, was asking questions, but those questions—the SEC and FINRA were on one side and CME and the Commodities Futures Trading Board were on the other side. We can find no communication where they were sharing those concerns with the other regulators.

Better coordination, I think, could have and should have led to greater vigilance over the safekeeping of MF Global's customer

funds. We also have learned that internal controls do not work if they can be readily short-circuited by a company's CEO.

And while not all of the facts are yet known about the role of MF Global's CEO, Jon Corzine, in the spectacular collapse, the subcommittee's investigation leaves little doubt that MF Global was, in many ways, his corporate alter ego, and that ultimate responsibility for what happened in the firm's chaotic final days rests with him. Today's hearing will examine whether customer funds were used to meet the firm's demand for cash in its fateful last week. According to a preliminary report filed by the bankruptcy trust, margin calls were a major source of stress to the firm in its last week.

We hope to learn from witnesses today whether this liquidity crunch at MF Global led someone at the firm to improperly use customer funds to meet the firm's needs for cash.

In order to get to the bottom of what happened and who was involved, the subcommittee needed the cooperation of various banks that conducted business with MF Global. A number of those banks were contacted about testifying today, but only JPMorgan Chase volunteered to appear before us.

Financial institutions may understandably be reluctant to testify on complex transactions because of the time and resources it takes to ensure the testimony is accurate and complete. JPMorgan Chase's cooperation, therefore, is very much appreciated.

MF Global was the 8th largest bankruptcy in the Nation's history, but that is not what makes its failure noteworthy. Firms of all size fail every day. For every reward, there is a corresponding risk, but that is part of the free market.

However, a $1.6 billion loss of customer money is not a risk that should exist in an effectively regulated free market. I hope this hearing will bring us closer to understanding what went wrong and where that money is.

Thank you to our witnesses. And let me say this, our investigation—everyone testifying on this panel has a good reputation. They have a good background. They are respected in the industry, and so, as I think has been said before, this hearing is to find out what happened, not to accuse any of you of any wrongdoing, because that hasn't been demonstrated.

And so, we appreciate your testimony. You are not on trial here. You were simply in a fact-finding mode. And I have been struck by—I have looked at your resumes and your backgrounds. You are very qualified and you have a very good reputation, all of you. So thank you.

Chairman NEUGEBAUER. I thank the chairman and now the gentleman, Mr. Lynch, is recognized for 2 minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

I would also like to thank the witnesses here today for helping this committee with its work.

Mr. Chairman, I believe that in many ways you should be given credit for the attention you have given to the collapse of MF Global. I think we can learn many lessons from the collapse of MF Global, about the accounting treatment of certain risky investments, about the ability of regulators to meaningfully oversee financial institutions, and about what we can do to make sure regu-

lators have the tools to prevent a situation like this from occurring in the future.

We have explored these issues in previous hearings, and I hope we have an opportunity to revisit them today. However, I must raise an issue of process with you today that has been mentioned by my ranking member, Mr. Capuano.

I believe that your side, you and your staff, have been unacceptably slow in sharing documents with our offices and other Members on this side of the dais. In fact, my office did not receive a copy of the MF Global "break-the-glass plan," something that seemingly Republican Members apparently had a copy of at least as of last February's hearings. Moreover, the ranking member was unaware until this Sunday that you were in possession of about 100,000 pages of documents relating to the final days of MF Global.

House Rules, as my colleague has indicated, state that each Member shall have access to all committee hearings, records, data, charts, and files. I have not had access to the extensive portfolio of documents that your staff has obtained from MF Global in preparation for this hearing.

Mr. Chairman, I have no intention of going easy on MF Global. We are of one mind here. And I am as incensed as you are at the breathtaking lack of care shown by employees at MF Global in the handling of customer funds.

But I am also disappointed that as a member of this committee, I have not received the full extent of information collected by your staff and circulated to Republican Members.

Now just like your side, we take our responsibility to prepare for these hearings very seriously. We take our responsibility to the taxpayer very seriously. And, again, while I give you great credit for focusing on this issue and you deserve that credit, I hope that this investigation will move forward in a bipartisan collaborative way, and that our office and the rest of the Members on this side of the dais will be privy to all the information that your staff has obtained and will obtain.

Mr. Chairman, I thank you for the time and I yield back.

Chairman NEUGEBAUER. I thank the gentleman for his remarks.

And now, I yield to the vice chairman of the Oversight and Investigations Subcommittee, Mr. Fitzpatrick, for 1 minute.

Mr. FITZPATRICK. Thank you, Mr. Chairman.

So here we are in hearing three of a series of hearings investigating the facts surrounding the collapse of MF Global. We know that throughout the week of October 24, 2011, MF Global suffered a severe lack of cash that ultimately led to the firm filing bankruptcy on October 31st, and in those chaotic final days up to $1.6 billion in customer money went missing.

At a time when Americans already lack confidence in the financial markets, MF Global provides another devastating example of how multi-billion dollar securities firms can seriously impact middle-class Americans.

Like many members of this committee, I have had constituents affected by this event, and that is who I am here to speak for. We owe it to customers who lost money to discover exactly what happened at MF Global.

But what these hearings are also designed to do is to provide insight into our financial markets and the regulatory regimes designed to protect them.

The American people expect us to hold the wrongdoers accountable and to protect those who played by the rules. So here we are. As Members of the House of Representatives, we are here to stand in the place of millions of Americans we collectively represent.

We are here to find answers for them. And I commend the hundreds of hours that the subcommittee has spent devoted to digging deep into this matter. I look forward to the testimony of today's witnesses and the answers that we hope they should be able to provide.

Thank you, Mr. Chairman.

Chairman NEUGEBAUER. I thank the gentleman.

And I ask unanimous consent that a letter from the Commodity Customer Coalition actually thanking the full committee, or this subcommittee, for our work on MF Global be made a part of the record today.

Without objection, it is so ordered.

Now, I would like to yield to the gentleman from Texas, Mr. Canseco, for 1½ minutes.

Mr. CANSECO. Thank you, Mr. Chairman.

Back in the fall of 2008 as the financial crisis was unfolding, then-candidate Obama stated in a debate the importance of "holding ourselves accountable day in, day out, not just when there is a crisis for folks who have power and influence and can hire lobbyists, but for nurses, the teacher, the police officer who frankly at the end of each month, they have a little financial crisis going."

There is a big financial crisis going on right now for farmers and for ranchers across the country who can't access their portion of $1.6 billion that has gone missing at MF Global.

This past week, we learned that CEO Jon Corzine likely wasn't the innocent bystander he claimed to be in front of this committee back in December.

Yet, for all the rhetoric we hear from the Obama Administration about holding people accountable, this Administration sure has a way of clamming up when the person in question is a former Democratic Senator and Governor.

I hate to sound cynical, but I can't help but think that the "power and influence"—as President Obama may call it—that someone like Jon Corzine carries is exempt from a thorough investigation by the Department of Justice.

The victims of MF Global deserve their money back, but they also deserve to know what happened to it. This hearing and our continued investigation is of extreme importance.

And I yield back the balance of my time.

Chairman NEUGEBAUER. Thank you.

The gentleman from California, Mr. Royce, is recognized for 1½ minutes.

Mr. ROYCE. Thank you, Mr. Chairman.

The clear problem that arose here, the clear problem that made bankruptcy the only option for MF Global, was that no one could account for what happened to over $1 billion in segregated funds, as we are going to learn today. But more than leaving the various

customers of MF Global high and dry, what has happened is that those missing funds have rocked the foundation of the CFTC's customer protection regime.

Rules governing segregated accounts have been around for 75 years. And they are not difficult to understand, reportedly they are not difficult to enforce, yet the CFTC has failed in this most basic task.

So we go to Commissioner O'Malia's observation at the CFTC. He says that basically he is arguing that since 2010, the CFTC has been consumed with drafting new rules to regulate not just our derivatives market, but the world's derivatives markets, with much of the manpower at that agency dedicated to enforcing the Dodd-Frank Act.

According to Mr. O'Malia, the CFTC missed cracks in the system and it has cost them over a billion here in terms of the clients, at least hundreds of millions.

So I will end by quoting him: "Since the Dodd-Frank Act became law, the Commission has acted like a little child abandoning the old toys and swapping them out for the new. It has concentrated on swaps rulemaking, while averting its gaze from the future's markets and their developments."

Therein lies the concern, the broader question that has to be answered here regarding the ability and willingness of the CFTC to ensure customer funds are protected.

I yield back, Mr. Chairman.

Chairman NEUGEBAUER. I thank the gentleman.

I yield to the ranking member, Mr. Capuano for—

Mr. CAPUANO. Thank you, Mr. Chairman.

Mr. Chairman, it is kind of interesting. We started off in trying to be bipartisan and now I have just heard that both President Obama and the Dodd-Frank Act caused this problem.

And I would like any Member here who has any information whatsoever that the Justice Department, the SEC, the CFTC, or any other appropriate agency has given Mr. Corzine or anyone else a pass on the investigation related to this matter.

Because if you do, I would like to see it, and it would be another matter that we don't have. I would like to know if Dodd-Frank caused this problem, then what caused Lehman Brothers, what caused Madoff?

I know we are all out here to make political points. I am a politician too, but let's stick to the matter at hand. What happened here? If you know, go to the Justice Department and tell them.

If you want to make political points, there are microphones out in the hall, that is the appropriate—

Mr. ROYCE. Will the gentleman yield?

Mr. CAPUANO. I sure will.

Mr. ROYCE. I appreciate you yielding. The point that I am making—I am quoting the Commissioner at the CFTC. It is his observation. It is his observation that since the Dodd-Frank Act became law, the Commission has acted in this way.

It is his observation that it has concentrated on swaps rulemaking while averting its gaze from the futures markets and their development.

Mr. CAPUANO. I would be happy to—

Mr. ROYCE. So perhaps you should address—

Mr. CAPUANO. —explain my comments. I would be happy to ask the gentleman—

Mr. ROYCE. —his observation.

Mr. CAPUANO. I would be happy to join the gentleman to invite the Director of the CFTC back and we will ask him that question to see if he thinks, here publicly, on the record, that Dodd-Frank caused this problem. And if he did, I will simply agree with you and say, good job. But if he doesn't, then I would expect you to do the same.

Chairman NEUGEBAUER. I thank the gentleman.

And now, I am going to recognize our first panel: Ms. Laurie Ferber, general counsel, MF Global Holdings Limited; Mr. Henry Steenkamp, chief financial officer, MF Global; Ms. Christine Serwinski, chief financial officer of North America; and Ms. Edith O'Brien, assistant treasurer at MF Global.

I will now recognize each of you now for your opening statement. And first of all, I need you to please stand and raise your right hand.

[Witnesses sworn.]

Chairman NEUGEBAUER. Thank you, you may be seated.

Without objection, your written statements will be made a part of the record.

And at this time, I will recognize Ms. Ferber for your opening statement.

TESTIMONY OF LAURIE FERBER, GENERAL COUNSEL, MF GLOBAL HOLDINGS LIMITED

Ms. FERBER. Thank you. My name is Laurie Ferber. Since June 2009, I have served as the general counsel of MF Global. Since the bankruptcy filing of MF Global Holdings, I have remained with the company to assist the bankruptcy trustee and the bankruptcy professionals in their efforts to maximize the value of the MF Global estate.

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 was born and raised in the Bronx, New York. I received a Bachelor's Degree from the State University of New York at Buffalo and graduated from New York University School of Law.

Prior to joining MF Global, I served as general counsel of the commodities and/or fixed income trading units of two financial services firms.

As general counsel of MF Global, I supervised the legal and compliance functions. 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.

MF Global's legal department included approximately 17 attorney and 12 other professionals. The firm's legal team was supported by several highly skilled outside law firms with expertise in various areas of law pertinent to MF Global's operating businesses.

The global head of compliance, who had substantial experience and expertise in compliance matters and managed the global de-

partment of over 80 people, also reported directly to me. I reported directly to the chief executive at MF Global and interacted frequently with the board of directors.

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.

The firm's senior management and board of directors reacted to those events by initially seeking to sell all or part of the firm and severely reducing it's balance sheet, while also seeking to make sure the firm met all of its obligations.

Ultimately, when the sale of the firm became impossible, MF Global Holdings had no viable option other than to file for bankruptcy protection. Throughout MF Global's final weekend, I personally was in MF Global's offices in New York for all but a very few hours, as were many members of MF Global senior management. The board of directors was also present at MF Global's offices, carefully monitoring events and receiving almost constant updates.

My colleagues and I were in very frequent contact with many of MF Global's regulators during this time, including the SEC, the CFTC, the CMA, the CBOE, FINRA, and the Federal Reserve Bank of New York, as well as the Financial Services Authority, the U.K. financial services Regulator.

Keeping the regulators informed was one of my top priorities, and that included spending most of Sunday evening, October 30th, working with regulators to agree to the terms on which the firm would be sold and its accounts transferred to a buyer.

As best as I can recall, it was shortly after concluding that process, and likely just before midnight on October 30th, that I learned the firm was unable to reconcile its segregated funds account. I was shocked, because I believed that the firm had in place a fully compliant system operated by highly qualified professionals for controlling and securing customer segregated funds.

As a last effort, senior people from a potential buyer worked with people from our finance and operations team to provide a fresh set of eyes to help identify the reconciliation errors.

Once the inability to reconcile the accounts became clear, at approximately 2 a.m., we notified the regulators. Later that morning after several hours of discussion with the regulators, we made the bankruptcy filing.

Since that filing, I have been assisting in the complex efforts—global efforts to maximize the value of the bankruptcy estate for all MF Global stakeholders.

I will try to answer any questions you have.

[The prepared statement of Ms. Ferber can be found on page 77 of the appendix.]

Chairman NEUGEBAUER. And up next will be Mr. Steenkamp.

TESTIMONY OF HENRI J. STEENKAMP, CHIEF FINANCIAL OFFICER, MF GLOBAL HOLDINGS LIMITED

Mr. STEENKAMP. Thank you for the opportunity to make this brief statement.

My name is Henri Steenkamp and I am the chief financial officer of MF Global Holdings Limited, a position I have held since April

2011. Let me say at the outset that I am deeply saddened, upset, and frustrated that money belonging to MF Global Inc.'s customers has not been returned in full.

I know, however, that my reactions cannot be compared to those of the people who are suffering with this issue.

Along with certain other senior executives of MF Global Holdings Limited, I have remained at my post following the bankruptcy filing and am working diligently with the Chapter 11 trustee to do what I can to maximize the value of the firm for all interested parties.

That said, because of the SIPC trustee's rules and policies, I have unfortunately not been able to participate in the current efforts to return customer funds.

While I am deeply distressed by the fact that customer monies have not yet been fully repaid, I unfortunately have limited knowledge of the specific movements of funds at the U.S. broker/dealer subsidiary, MF Global Inc., during the last 2 or 3 business days prior to the bankruptcy filing.

This is in part because of my global role, and in part because during those days, I was taken up with other very serious matters.

As the global CFO, I had many different functions, but principal among them was the effort to: one, ensure that the holding company's consolidated financial accounts complied with all U.S. accounting and reporting requirements; and two, work closely with our investors and the rating agencies.

As its name suggests, MF Global Holdings Limited, my employer, is a global holding company with approximately 50 domestic and foreign subsidiaries.

Each of the regulated subsidiaries generally had its own or a regional chief executive officer, chief operating officer, chief financial officer, and others obligated to independently discharge the customary duties of those offices according to its home jurisdiction's regulatory requirements.

All of these positions were filled by highly experienced professionals, dealing directly with local regulators. Direct involvement with operational matters such as bank accounts or fund transfers has never been part of my duties.

It is, of course, important to understand the way in which segregation issues were handled at MF Global Inc., the subsidiary that acts as a futures commission merchant in the ordinary course of business.

To avoid confusion, when necessary to specifically refer to MF Global Inc., I will call it "MFGI." MFGI held all U.S. FCM customer funds required by law to be segregated, and all segregation calculations were performed by experienced MFGI personnel in Chicago and overseen by MFGI finance professionals. To my understanding, MFGI segregation of client funds had been reviewed repeatedly by the firm's outside auditors and regulators over a long period of time.

As a general matter, I was not involved with the details of segregated funds in the course of my duties as global CFO, nor were the complex segregation calculations performed by MFGI in Chicago and reported to regulators on a daily basis.

The week prior to the bankruptcy filing saw, among other things, multiple rating agency downgrades in very quick succession, extraordinary liquidity stresses, and efforts to sell all or a part of the firm. It was a time of constant pressure and little or no sleep with a significant number of critical issues to resolve.

As the CFO of the holding company, my attention was appropriately focused on crisis management and strategic issues relating to the sale of the company.

On Monday, October 24, 2011, Moody's announced it was downgrading MF Global's credit rating by one notch, leaving the firm with the lowest possible investment grade rating.

This was followed by further downgrades throughout the rest of the week, the speed and severity of which were unprecedented in my experience, placing extraordinary pressure on the firm's liquidity.

As the situation deteriorated, the sale of the FCM merchant business and/or the entire firm was pursued. In between my dialogue with the rating agencies, I dedicated my time to the daunting task of facilitating the due diligence necessary for an acquisition or asset sale almost exclusively in the period commencing on the evening of October 27th, and ending with the decision to file for bankruptcy on the morning of October 31st.

As I recall, on Sunday, October 30th, when a deal for the acquisition of all or part of the company appeared to be close at hand, I first learned of a serious issue with MFGI's segregated fund calculations.

Unfortunately, as the subcommittee is aware, the efforts to reconcile the segregation calculations were not successful and the deal fell through.

I, along with others from MF Global, promptly notified our regulators about the segregation issues.

I understand that the subcommittee, MFGI's customers, and the public have many unanswered questions about customer funds. I share many of those questions and I am personally extremely frustrated and distressed that the remaining outstanding client funds have not been repaid in full.

I would be pleased to answer the subcommittee's questions.

Thank you.

[The prepared statement of Mr. Steenkamp can be found on page 105 of the appendix.]

Chairman NEUGEBAUER. Ms. Serwinski, you are recognized for 5 minutes as well.

TESTIMONY OF CHRISTINE SERWINSKI, CHIEF FINANCIAL OFFICER, MF GLOBAL INC.

Ms. SERWINSKI. Thank you for the opportunity to testify today. My name is Christine Serwinski. At the time of the events in question, I was the chief financial officer of MF Global Inc., the firm's North American broker/dealer and futures commission merchant.

In my position as the CFO of MF Global Inc., I was responsible for the accounting and regulatory accounting team.

In light of the subcommittee's focus on the events of the week of October 24th, it is important to note that the departments responsible for the transfer of funds into and out of the company—treas-

ury, treasury operations, and securities operations—did not report to me.

I am aware that the subcommittee is particularly interested in the events of the week prior to the October 30th bankruptcy. I will do my best to provide whatever information I can, but I was away for the majority of that week. And I apologize in advance if I am unable to add a great deal of detail.

On Monday, October 24th, Moody's downgraded MF Global's credit rating. On Tuesday, there was an earnings call. On that same day, I left Chicago for a previously planned vacation. I had every reason to believe that the firm was on solid ground prior to my departure.

Before leaving, I spoke to members of my staff and drafted e-mails to coworkers to ensure that all of the functions of my office would be covered. All of my colleagues and subordinates knew how to and did reach me as necessary during my absence. I had access to e-mails via my BlackBerry during my week off, and I read e-mails when I could. I also spoke to people at MF Global on the telephone from time to time throughout the week.

All communications with MF Global employees indicated that things were very busy, but I was assured that everything was under control. And at no time did anyone ever suggest that I should return to the office. Nonetheless, late in the day on Thursday, I decided to come back to Chicago a day early, on Sunday. I was not alarmed, but I believed that it would be better to return early given the level of activity at the firm.

After receiving varying reports earlier in the day, and upon arriving at the office on Sunday evening, I was informed that in fact, there appeared to be a segregated and secured deficit of approximately $900 million. I dove into the accounting with my team, believing that this must be an accounting error, because such a large deficit was simply inconceivable to me.

Early Monday morning the assistant treasurer handed me a piece of paper that identified a series of transactions that, according to calculations, accounted for the shortfall in the FCM's segregated accounts. I then realized the deficit in the segregated and secured funds was not an accounting error.

We informed a representative of the CME, and my focus immediately shifted to identifying all firm funds within MF Global that might be transferred into the segregated and secured environment as quickly as possible. We worked relentlessly throughout the early morning hours and indeed throughout most of the day on October 31st to try to bring the segregated, unsecured accounts back to the appropriate levels.

Although some of the funds were transferred into the FCM's segregated and secured accounts, a number of submitted wires were not executed by the bank and we were unable to move sufficient funds to make up for the shortfall. Sometime on October 31st, I learned that MF Global had filed for bankruptcy, that we were under SIPC protection, and that the firm could no longer engage in further financial transactions. Shortly thereafter, the SPIC trustee asked me to stay on at MF Global to assist in the wind-down of the business, which I agreed to do.

I look forward to addressing to the best of my knowledge and ability any questions that the subcommittee may have.

Thank you.

[The prepared statement of Ms. Serwinski can be found on page 101 of the appendix.]

Chairman NEUGEBAUER. Thank you.

We have been instructed that Ms. O'Brien does not plan to give an opening statement at this time, so we will therefore begin our questions.

Ms. O'Brien, on Friday, October 28, 2011, MF Global transferred $200 million from the segregated customer accounts to the house account, and then subsequently sent $175 million of money from the house account to the MF Global U.K. account to cover an overdraft.

As you are aware, in December Mr. Corzine testified here that you assured him that those transfers complied with the CFTC rules about customer segregation. Reportedly, you dispute Mr. Corzine's testimony.

So let me ask you today, Ms. O'Brien, did you give Mr. Corzine assurances that the farmers' and ranchers' money that was in MF Global's account, the segregated accounts, did you give him assurances that that money was not their money?

Ms. O'BRIEN. [Off mike.]

Chairman NEUGEBAUER. I am sorry. We—you are going to have to—yes.

Ms. O'BRIEN. On the advice of counsel, I respectfully decline to answer based on my constitutional rights.

Chairman NEUGEBAUER. I am going to yield to Mr. Capuano and see if he would like to—

Mr. CAPUANO. Ms. O'Brien, I just—I understand and I respect your constitutional rights. But there was an article in—I think it was today's Wall Street Journal, maybe yesterday's, that stated that you are trying to negotiate an immunity with Federal investigators. And I am just curious if that article was accurate or inaccurate. I am not asking about anything that happened at MF Global. What I am simply asking is, is that news report an accurate report or not?

Ms. O'BRIEN. On the advice of counsel, I respectfully decline to answer based on constitutional rights.

Chairman NEUGEBAUER. Ms. O'Brien, the subcommittee asked you here today to testify so that you could help use your background and experience to solve a very serious matter, to try to find out exactly what happened and how we can keep this from happening again. We are extremely disappointed that you have chosen to do that. I would just ask you now, do you intend to invoke your Fifth Amendment right as to any question that the subcommittee may ask you on these subjects today?

Ms. O'BRIEN. I will.

Chairman NEUGEBAUER. I am disappointed by your answer because I believe you have important knowledge, and I am hopeful that maybe at some point you will reconsider and come back and testify before this committee. But at this time, with unanimous consent, I am going to dismiss Ms. O'Brien from the panel.

Ms. O'Brien, you are dismissed.

Ms. O'BRIEN. Okay.

Chairman NEUGEBAUER. I am going to continue the questioning. I think what we will do at this particular point in time is—Mr. Capuano, I used that time. We will reset the time and we will begin the question-and-answer period again.

Ms. Serwinski, on October 28th, MF Global transferred $200 million from the segregated accounts and then subsequently transferred $175 million to the U.K. affiliate to cover an overdraft. In an interview that you had with our committee, you stated that if you were working that day, it was very unlikely you would have approved a $175 million transfer because it could have violated the SEC's net capital rules. Can you explain that to me?

Ms. SERWINSKI. The transaction, $175 million transaction as I understand it, was an intercompany loan between MF Global Inc. and its affiliate, MF Global U.K., Limited. As I understand it, the $175 million was being taken out of customers' segregation. There were two things I would have looked at with respect to this transfer.

First, did the firm, what was referred to and has been referred to as the firm-invested-in-excess-segregation-and-secured-funds, with that $175 million, brought that level to a negative. The firm could still be in regulatory compliance, but it would have breached its own internal policy.

The second consideration that would have had to be evaluated was a potential impact on the excess net capital of the firm. So, if that number without being adjusted would have brought, I believe, the firm to a potential under early warning situation, which wouldn't have been a rule violation, but would have required a reporting to the regulators.

Chairman NEUGEBAUER. I want to go back to my question. If you had been there on that day, would you have approved that transfer? Yes or no?

Ms. SERWINSKI. I honestly don't know what all the circumstances were around that transaction. But it would be—if the impact would have breached a regulatory rule, I don't believe I would have approved it.

Chairman NEUGEBAUER. Knowing what you know today, would you approve that transaction, yes or no?

Ms. SERWINSKI. No.

Chairman NEUGEBAUER. Okay. Thank you.

You are aware of an e-mail in which Edith O'Brien described this $175 million transfer. And the e-mail states that her, Mr. Corzine, J.C. I believe that—is it normal course of business for the CEO to make instructions on wiring funds? Did that happen on a regular basis on your watch?

Ms. SERWINSKI. No.

Chairman NEUGEBAUER. So, this would be out of the ordinary for Mr. Corzine to start calling people and instructing them to start wiring money?

Ms. SERWINSKI. Yes, I believe that would be an unusual event.

Chairman NEUGEBAUER. I thank you for that.

Ms. Ferber, according to CME, on the afternoon of Thursday, October the 27th, a representative of CME group sent a letter to you, Ms. Serwinski, and Mr. Bolan, I believe, and all of the MF Global

senior managers. And it stated that effective immediately any equity withdrawals from MF Global Inc., must be approved in writing by CME's group audit department. Basically, CME is telling MF Global not to move its own capital out of MF Global without CME's approval.

Who did you disseminate that information to when you received that letter?

Ms. FERBER. I really don't recall. At the time it obviously went directly to our finance group and to myself. And I cannot remember exactly what I did with it back on that Thursday. I know I recall having conversations where people were aware of it.

Chairman NEUGEBAUER. Did you seek approval when you made the $175 million transfer to MF Global U.K.? Before you moved that money, did you notify CME that you were making that transfer?

Ms. FERBER. I was not aware of that transfer before it was made, so I would not know that.

Chairman NEUGEBAUER. So you don't know who you disseminated the information to and maybe not everybody got the memo. Is that what you are—

Ms. FERBER. Again, the memo went directly to key finance people, and the key people operating the transfers and things were all in Chicago. I assume it was shared there, but I really don't recall.

Chairman NEUGEBAUER. Mr. Steenkamp, I was interested in your testimony where you said you are the CFO for MF Global Holdings Limited, and that you were addressing very important issues facing the company at that time as their CFO.

Is that your testimony?

Mr. STEENKAMP. That is correct, sir.

Chairman NEUGEBAUER. Yes. Wouldn't you think the liquidity of a company would be one of the important aspects of a entity the size of MF Global?

And based on its businesses, would you think if they were having liquidity problems, that would be something in which the CFO should be involved?

Mr. STEENKAMP. Sir, there were many things going on at that point in time.

Chairman NEUGEBAUER. No, that wasn't the question. The question is, is liquidity of the corporation an important role of the CFO?

Mr. STEENKAMP. The liquidity of the financial firm—

Chairman NEUGEBAUER. This is a yes-or-no question. This is not rocket science here.

Is the liquidity of the corporation an important piece of the role of a chief financial officer of a company?

Mr. STEENKAMP. Sir—

Chairman NEUGEBAUER. Yes or no, sir?

Mr. STEENKAMP. Sir, the liquidity is critical on a consolidated basis, yes.

Chairman NEUGEBAUER. Yes. So I am surprised that you have very little knowledge about the transfers and these were not small transfers of money, margin calls, people trying to liquidate a position as to create liquidity and you are saying you really didn't have much knowledge of that?

Mr. STEENKAMP. Yes. Sir, when it came to the liquidity, I was looking at liquidity on a global consolidated basis. That was a transfer within MF Global Inc., that obviously was important, but there were many liquidity events that were occurring across the firm, not just in Chicago, but across the whole globe with which we were dealing.

Chairman NEUGEBAUER. And how was the liquidity going?

Mr. STEENKAMP. We slowly experienced throughout that week a drastic change in liquidity, especially from Wednesday to Friday, and we experienced in this last couple of days significant liquidity stress, I think, but from the call not too dissimilar on the Thursday and Friday as a run on the bank.

Chairman NEUGEBAUER. I see my time is up.

I now turn to the ranking member, Mr. Capuano.

Mr. CAPUANO. Thank you, Mr. Chairman.

I actually don't have a clue what questions to ask any of you. Because I have the general counsel to MF Global Holdings saying, "I didn't know what was going on. I had nothing to do with this."

I have the chief financial officer of MF Global Holdings Limited saying, "It was not my job. I didn't do it."

And the chief financial officer—by the way, who also said, "It is MF Global Inc.'s issue, not mine. I don't have anything to do with it, and though they report to me, I don't know anything."

And I have the chief financial officer of North America, MF Global Inc., saying, "I was on vacation."

So how am I supposed to ask you questions, when apparently none of you knew what was going on, or claim to not know what was going on, have no information whatsoever?

How did this company run? Did anybody in the company, anyone, have authority to transfer customers' funds?

Mr. Steenkamp, I ask you, did anybody have that authority? I know you said in your written statement you didn't, but who did?

Mr. STEENKAMP. Sir, my responsibility was to oversee the global finance function. I was not responsible for—

Mr. CAPUANO. I know what you weren't responsible for. I read the testimony. Apparently, you weren't responsible for anything.

Who was responsible for deciding to transfer customers' funds? Who? If not you, fine. I read your testimony. Who?

Mr. STEENKAMP. Sir, the transfers of customer funds would be resident—the authority would be resident in each of the local regulated entities.

So in Chicago, those—

Mr. CAPUANO. Who would that be, a name?

Mr. STEENKAMP. It would be between the finance team, Ms. Serwinski's team. It would be between—

Mr. CAPUANO. So it is Ms. Serwinski—

Mr. STEENKAMP. —Ms. O'Brien's team—

Mr. CAPUANO. And that is what I read in your testimony, but I wanted to make sure I read it right.

Ms. Serwinski, apparently Mr. Steenkamp thinks that you have the authority. Is that correct? Do you have the authority? Did you have the authority to transfer customers' funds?

Ms. SERWINSKI. I did not have the authority to transfer customer funds.

Mr. CAPUANO. Okay.

Ms. SERWINSKI. As I mentioned in my opening statement, sir, the transfer of customer funds was managed by the treasury group—the treasury operations group and the security operations group.

Mr. CAPUANO. I thought you were the chief financial officer. The treasury group didn't report to you?

Ms. SERWINSKI. No, they did not.

Mr. CAPUANO. Who did they report to?

Ms. SERWINSKI. They reported to the global treasurer.

Mr. CAPUANO. And who in the treasury group would be the main person responsible for making that decision?

Ms. SERWINSKI. Making the decision to—

Mr. CAPUANO. To transfer a customer's funds?

Ms. SERWINSKI. It would be the assistant treasurer or the global treasurer.

Mr. CAPUANO. Names?

Ms. SERWINSKI. Edith O'Brien and Vinay Mahajan.

Mr. CAPUANO. So I have not yet seen any corporate organizational table for all MF Global. I understand there were over 50 or 80 different companies, so it is going to be fun to try to read it.

But of all the people who are probably going to show up on the corporate ladder, I am willing to bet that Ms. O'Brien's name or her position will not show up.

And she, however, was the only person—she was the top ranking person to say, let's take all of the customer funds and do whatever we feel like with them.

If that is the case, I think we have more than a little bit of a problem here. And I will tell you that this hearing, after reading this testimony and listening to you, reminds me an awful lot of a hearing we had on this committee, I don't remember how many years ago, on Enron.

We had Mr. Skilling. We had Mr. Lay. We had Mr. Fastow here. And I told them exactly what I am going to tell you. I said, okay, none of you did. Apparently, no one did anything wrong but there is a billion dollars missing.

Here is what you should be concerned with, not us, we are not the appropriate investigative body to determine who had that responsibility. Here is your concern, the people sitting next to you.

Because somebody is going say something to the appropriate investigators to say, this is the person who had final responsibility. And when that happens, there are going be problems for those individuals.

So I wish I could find some wonderful things. I guess one other question. All of you were working for MF Global before these problems arose; is that correct?

Did I read your testimony correctly? You were all working there before? And you are all still working there? Is that correct?

Ms. SERWINSKI. No, I am—

Mr. CAPUANO. No, you are no longer there, Ms. Serwinski?

Ms. SERWINSKI. —no longer there.

Mr. CAPUANO. Then, I will ask you, Mr. Steenkamp, Ms. Ferber, there have been some reports that MF Global is considering bonuses.

Are you in line for some of those bonuses?

Mr. STEENKAMP. As far as I am aware, there has been no decision made on bonuses, sir.

Ms. FERBER. I think the trustee emphasized that in his statement.

Mr. CAPUANO. So I have well-paid employees of a major company that somehow has misplaced or misappropriated a billion dollars of customer funds, and yet you are asking the trustee in bankruptcy—and may—you may not, not you, but someone is asking the trustee in bankruptcy to give bonuses to the very people who may or may not have had something to do with this?

Do you see that as a potential little issue?

Mr. Steenkamp, do you think that would be appropriate for this trustee in bankruptcy at this point, before we know what happened, to be giving out bonuses to people who were there who may have had something to do with creating this problem?

Mr. STEENKAMP. Sir, that is not a decision that lies in our hands. We believe the trustee will make a decision that is appropriate.

Mr. CAPUANO. Ms. Ferber, do you think that is appropriate? You are the general counsel, would you advise your clients that is a good idea?

Ms. FERBER. I would totally defer to the trustee. My focus right now is on helping the trustee. It is his responsibility to figure out how to manage the bankruptcy estate and to retain employees and everything else.

Mr. CAPUANO. That is fair enough. I appreciate your consistency in having nothing to add to this discussion.

And again, as I said from the beginning, I wasn't sure what questions I could ask to add the information, and apparently I have now spent 6 minutes and done just that.

Thank you.

Chairman NEUGEBAUER. I thank the gentleman.

And now, Mr. Fitzpatrick is recognized for 5 minutes.

Mr. FITZPATRICK. Thank you, Mr. Chairman.

Mr. Steenkamp, did you, on Sunday, October 30th, or any day for that matter, instruct anybody at MF Global to hold off on contacting the regulators about MF Global's segregated deficiency?

Mr. STEENKAMP. I have no memory of instructing anyone to hold off, sir.

Mr. FITZPATRICK. You have no memory of instructing anybody?

Mr. STEENKAMP. No.

Mr. FITZPATRICK. Ms. Serwinski, you state on page three of your testimony that, "on Saturday I was initially told that the segregation and secured statement for Friday showed the firm to be under-segregated."

Who told you that?

Ms. SERWINSKI. Someone on our staff, I believe. I don't recall who exactly the person was, but someone on my staff.

Mr. FITZPATRICK. Someone on your staff told you—

Ms. SERWINSKI. —in the finance team.

Mr. FITZPATRICK. And who was that?

Ms. SERWINSKI. I don't recall if it was the regulatory capital controller or the controller.

Mr. FITZPATRICK. That would be a pretty significant piece of information you received on the day that you returned back from your vacation; correct?

You don't remember who told you that you had a significant deficiency?

Ms. SERWINSKI. Originally, when the calculation was done on Saturday morning, it showed a deficiency. My department was assured by the treasury or treasury operations group that there was a reconciliation item or issue to be resolved.

They were spending that Saturday afternoon to do just that. On Sunday morning before I boarded a flight back to Chicago, I was informed that in fact the firm might have been truly undersegregated at that time—as of the 28th.

When I landed, I received information to say, no, we were not actually undersegregated. When I went to the office I was told that, yes, in fact, we were undersegregated, and that is when the team started to look to see how that could possibly be the case.

Mr. FITZPATRICK. Ms. Serwinski, did you inform anyone else of that fact?

Ms. SERWINSKI. Once we determined that the funds had in fact not been an accounting error, but an actual deficit, we contacted the CME, who was on the premises, and I believe contacted my colleagues in New York at that point.

Mr. FITZPATRICK. And what day was that? Was that Saturday?

Ms. SERWINSKI. No. That was probably very early in the hours of Monday, October 31st, or very late Sunday, October 30th.

Mr. FITZPATRICK. So you would have waited approximately 2 days to let anybody at CME know about the deficiency?

Ms. SERWINSKI. We did not believe—I did not believe it was a deficiency at that point.

As I mentioned, it was inconceivable to me that the firm could be undersegregated by that substantial amount.

Mr. FITZPATRICK. But it was in fact deficient by that substantial amount, correct?

Ms. SERWINSKI. It was brought to my attention later on, in the very early hours of October 31st, that yes, in fact, it was in deficiency.

Mr. FITZPATRICK. Undersegregation is a hugely significant violation; is it not?

Ms. SERWINSKI. Yes. We were undersegregated.

Mr. FITZPATRICK. And yet, you didn't inform management or any regulator of this significant fact? Is that your testimony?

Ms. SERWINSKI. I did after it was confirmed that it was an actual undersegregation situation.

Mr. FITZPATRICK. Ms. Ferber, on Friday, October 28th, JPMorgan Chase sent a letter asking MF Global to verify in writing that it had the authority under CFTC rules to transfer $170 million to replenish an account that MF Global U.K. had overdrawn.

Apparently, JPMorgan sent three drafts of that letter asking MF Global to confirm that the transfers were proper; is that correct?

Ms. FERBER. Yes, I believe so.

Mr. FITZPATRICK. At any time, did anyone at MF Global refuse to sign the letter?

Ms. FERBER. Not in any discussions with me. No.

Mr. FITZPATRICK. Were you told that anybody at MF Global refused to sign the letter?

Ms. FERBER. No, I was not.

Mr. FITZPATRICK. So you have no information of anybody at MF Global refusing to sign that letter; correct?

Ms. FERBER. You have to focus on which version of the letter, so—

Mr. FITZPATRICK. Any of the letters.

Ms. FERBER. The first letter was asking one individual to confirm that everything that has ever been done in the history of those accounts, and everything that would ever be done in the future, was in compliance with all CFTC rules.

And I think you know, as we certainly tried to convey, this was a very, very hectic time. And no one individual, as far as I know—and this is not an area that I supervise or am directly involved with—would be making all those transfers.

My understanding was JPMorgan confirmed that they were interested in two transfers, only two related transfers. That is what they were seeking assurances on. And on inquiry, thought it would be better if it was limited to that. We would be able to make that. I understood the importance of getting something to them quickly, getting them comfortable, and asked them to limit the letter to what they needed and we would get it signed.

Mr. FITZPATRICK. Did you tell Edith O'Brien, the assistant treasurer, about the letter being sent?

Ms. FERBER. I forwarded a copy of the letter to Edith O'Brien.

Mr. FITZPATRICK. Did you tell her it needed to be signed?

Ms. FERBER. Certainly that was the substance of our conversation.

Mr. FITZPATRICK. What was her response?

Ms. FERBER. At the point that I discussed it with her, I had erased those from JPMorgan. I understood their focus was on those two transactions. And my clear understanding from speaking to Ms. O'Brien was that if they limited it to those two transactions, she would sign it.

Chairman NEUGEBAUER. I thank the gentlemen.

Mr. Lynch is recognized for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

Ms. Ferber, how important is it for your firm, for MF Global, to protect client funds? How important is that?

Ms. FERBER. It is a critical obligation of any FCM.

Mr. LYNCH. Yes.

Ms. Serwinski, same question. How important is it that you protect client funds? Is that a peripheral responsibility, or how would you classify it?

Ms. SERWINSKI. No, it is a very critical and important—

Mr. LYNCH. Mr. Steenkamp?

Mr. STEENKAMP. That is a critical objective of the firm.

Mr. LYNCH. All right. So this is a central core responsibility. This isn't some esoteric rule. This isn't some accounting error. This is central. This goes to the very trust that your firm relies upon, and that the whole market relies upon in order to function.

And we have $1.6 billion of customer money take a walk, and none of you know anything about it. None of you are aware of it.

This is not a small amount of money, $1.6 billion in money that was entrusted to you, and that the whole reason for a segregated account is to protect the client's money.

It is absolutely disgraceful. It is utterly disgraceful what has happened here. And it is disgraceful that you sit there, and you say, "We knew nothing about it." "I was on vacation." "I was in Chicago." "I was in New York." "I was doing the global thing."

It is not believable, I have to tell you. It is not believable at all up here. It is utterly disgraceful. It is disgraceful not only for MF Global, but I think for anybody in your industry, because it is such a central principle in protecting clients, and hard-working farmers and grain operators, families who invested their savings, their hard-earned life savings. And they trusted you.

This industry is supposed to protect their interests. And they were robbed. They were robbed. And nobody knew anything about it, $1.6 billion.

Let me ask you, under CFTC Rule 1.23, it permits a firm to—and I think this is a problem, and we have to look at the regulations at some point—add its own funds to customer-segregated accounts. I understand the practice.

How do you tag your firm funds that you put in there, and you co-mingle with so-called segregated funds, which aren't segregated funds if you are adding firm funds to it, in my opinion. But how do you, Ms. Ferber, tag those funds?

Ms. FERBER. I think that is an accounting question. And I would really defer to my colleagues who have more knowledge on that. As you pointed out, it is fairly ingrained—

Mr. LYNCH. But you don't know. As general counsel of this central responsibility in protecting customer funds, you don't know?

Ms. FERBER. How funds are tagged in a bank account, no, I do not know. I know the customer funds need to be kept in a bank account that is denominated as a customer-segregated funds account.

Mr. LYNCH. Okay.

Ms. Serwinski, Mr. Steenkamp, do you have any ideas on this? If Rule 1.23 allows the firm to co-mingle funds, put a buffer in there in that account, along with customer funds that are segregated, so-called, how do you tag the firm's funds, and distinguish them from customer-segregated funds?

Ms. Serwinski?

Ms. SERWINSKI. If I may for a moment—

Mr. LYNCH. You may.

Ms. SERWINSKI. —I would like to take an opportunity to try to explain "segregation" and "secured funds," and the—

Mr. LYNCH. How about you just answer my question? Judging by your other responses, since I sat down here some time ago, Ms. O'Brien's declaration of the Fifth Amendment was more helpful to this committee than any of your answers.

So I don't want you going off on any long explanation. Because based on everything else that has come out of your mouths, all three of you, there has been nothing there that has owned up to the responsibility for any of the stuff that has gone on here, even though you are all three in major positions of responsibility.

So please answer the question that I asked. How do you tag the firm's funds and keep them separate from these customer-segregated funds in the same account?

Ms. SERWINSKI. Once firm cash and/or collateral is deposited into the segregated or secured environment, they become co-mingled with the customer secured and segregated funds.

Mr. LYNCH. So it is indistinguishable?

Ms. SERWINSKI. On a dollar-for-dollar basis, we just—

Mr. LYNCH. So it is just a balance. It is just a balance, the balance of segregated funds, and then you know what the margin is that you have put on top of that. Is that basically what you are telling me?

Ms. SERWINSKI. Yes.

Mr. LYNCH. So there is no ability, once that fund is in there, to distinguish any assets from another?

Ms. SERWINSKI. We would track the firm's investments in the excess segregated and secured funds on a daily basis.

Mr. LYNCH. But if you had to sell securities out of that fund, you could take either securities out of that, that were placed in there by customers, or you could take securities out, based on the company's deposits in there?

I am trying to figure out a way to prevent this from happening again.

Ms. SERWINSKI. I understand, sir.

Mr. LYNCH. I think there is a loophole here that there should be—this is a situation where the regulation that is in place has not protected these people, these grain operators, and these farmers, from having $1.6 billion stolen out of their accounts.

And I think somebody in your firm, or somebody out there in the industry should have recommended a better method of protecting them than exists right now.

I realize I am over my time, and I yield back.

Chairman NEUGEBAUER. I thank the gentleman.

And now, the gentleman from New Mexico, Mr. Pearce, is recognized.

Mr. PEARCE. Thank you, Mr. Chairman.

Ms. Ferber, I heard Mr. Lynch say that the clients were robbed. I can sort of see his point. Do you think that is an appropriate term?

Ms. FERBER. I—

Mr. PEARCE. Yes or no?.

Ms. FERBER. Excuse me?

Mr. PEARCE. Yes or no?

Ms. FERBER. Something—

Mr. PEARCE. The money isn't there.

Ms. FERBER. Something terrible happened. But I don't know how to describe it. Since October 31st, we have not had access—

Mr. PEARCE. At the end of the day, the money is not there. They put the money there, and it is not there, and they can't get it back.

Ms. FERBER. And that is terrible.

Mr. PEARCE. And does that fit the definition of "stolen" or "robbed?"

Ms. FERBER. Uh—

Mr. PEARCE. I just love this. This is magnificent. You are one of the highest-paid lawyers in the country. Bonnie and Clyde, they were chumps. They drove around. They used gas money to go out. You guys have people send things electronically to you, and nobody is responsible. And you can't even declare that it was robbed or stolen. What chumps those old-style bandits were.

Ms. Serwinski, now, you seemed alarmed when you came back to the office that these funds were taken. Why were you alarmed? Now, we have gone through the 24 hours. Wednesday, it didn't reconcile. And you are a little bit alarmed. Why were you alarmed? You were distressed.

Ms. SERWINSKI. I don't think I was alarmed on Wednesday.

Mr. PEARCE. Whatever term you used. You said you were distressed. You wouldn't have done it. So why would you not have done that? Why would you have not approved that?

Ms. SERWINSKI. Why would I have not approved it? One, based on the previous day's information I had.

Mr. PEARCE. No. Is it right or is it wrong, I guess, that is what I am getting at. Is it right to take that money and not pay it back by the end of the day? Is it illegal?

Ms. SERWINSKI. If it was utilizing customer funds—

Mr. PEARCE. Is it illegal to hold it overnight? Or is it illegal to hold it for a year? Is it illegal to take customer funds and shore up the sinking ship, and use them for a year?

Ms. SERWINSKI. I don't know what was done—

Mr. PEARCE. No. I didn't say you did. I am not accusing you of knowing what was done. You just said that it was sort of, you found it alarming, or whatever word you used. So—

Ms. SERWINSKI. I believe I said that if I was presented with the request to approve a $175 million inter-company—

Mr. PEARCE. We missed the deadline to pay it back. That is your testimony. We had missed the deadline. So what was the deadline? Was it a legal deadline? What deadline? What does it matter?

Ms. Ferber said she doesn't know if it is stealing or not. So what rule?

Ms. SERWINSKI. I think that I can explain. We were talking about two different items. But my reference in the written testimony with respect to the deadline being missed on the Wednesday for the repayment of intra-company, intra-day loans is what I was concerned about on Thursday, that had been brought to my attention.

Those intra-day loans that were not paid back by the end of the day did not violate the—we were still—the firm was in regulatory compliance at the end of Wednesday. What had been breached was an internal policy to ensure that the firm-invested-in-excess-segregation-and-secured-funds—

Mr. PEARCE. So it is not an external—there is no external prohibition against using segregated funds?

Ms. SERWINSKI. Excess segregated and secured funds?

Mr. PEARCE. There is no external prohibition?

Ms. SERWINSKI. Not that I am aware of.

Mr. PEARCE. Mr. Royce testified that it is against the law for 75 years. Mr. Royce's testimony was incorrect, then?

So you still have those funds, basically. You have taken them. And so what you are telling me is that the $1.6 billion is still not against the law; that you did what was fair and square?

Is that right, Mr. Steenkamp?

Fair and square, I am hearing the other two witnesses say it is fine; it is okay. Is it okay?

Mr. STEENKAMP. Sir, not knowing what actually happened, it is impossible to be able to comment on—

Mr. PEARCE. No. You took the money and you are supposed to give it back if they want it. If I put money in the bank, and if I can't get my money back from the bank, then the bank has taken it from me. If I can't get my money back, then the bank has taken it. They put their money with you. These hog farmers put their money with you and they can't get it back.

So is that right or is that wrong? Morally right, or is that morally wrong? It doesn't matter now anymore. Your legal counsel, obviously, she can't declare it to be against the law; nothing like that.

So tell me?

Mr. STEENKAMP. Sir, I think there are a lot of different concepts that are being combined at the moment. And there are—

Mr. PEARCE. Now I think I understand why Mr. Capuano and Mr. Lynch were a little frustrated here. Nobody had authority to move it. It is not against the law. It is missing now; it will probably never get repaid, and that is okay, because we can't really declare it, why it is okay. This is really reassuring for the American people, who might want to know that the money they are putting in the safekeeping of people like you all is not quite in safekeeping after all.

I think it sends a loud enough message that you all can't find the legality or illegality about it. I think that is the message that is going out today.

I think Mr. Capuano said it perfectly: Shame on you, shame on you.

Thank you. I yield back.

Chairman NEUGEBAUER. I thank the gentleman.

And now, the gentlewoman from California, Ms. Waters, is recognized for 5 minutes.

Ms. WATERS. I thank you very much, Mr. Chairman.

I was just talking with the staff here about some of the accounts that I have read in the newspaper where there has been some attempt to describe accounts, customer accounts, as opposed to other accounts.

And I suppose what I am hearing is that company money was kept in the same account as client money. And of course, one story said that the client money had been taken out and put in another account. And then the money was taken from that account to pay an overdraft. And when Mr. Corzine asked about where it came from, someone was able to say that it came from an account other than the client account.

So let me ask Mr. Steenkamp, do you know anything about another account where the client money was placed prior to the payout from that account to help take care of the overdraft?

Mr. STEENKAMP. Ma'am, to the best of my knowledge, I was not involved with any of those transfers. So I had not known about the details of those movements.

Ms. WATERS. Do you know about the details of what accounts, official accounts of the company, are there are 1, 2, 3, 4, 5, 10, 15? Do you know that much?

Mr. STEENKAMP. There were obviously accounts that were held in the Finco, in the holding company. Those accounts are very different than the separate accounts that are held in each of the regulated entities. And in my role, I was not involved in the detail of those accounts, which were managed by the senior professionals we had in each of our regulated entities. But each country is different, so there are very specific and specialized rules that apply to each country.

Ms. WATERS. Okay. As the CFO of MF Global, you signed Sarbanes-Oxley 302 and 906 certifications attesting to the internal controls of the Global Corporation as required in every year-end. As the CFO, you attest that your certifications are accurate, and you know that when they are not, you could face civil and criminal penalties.

So with that, my question is: Were you confident that your internal controls were adequate at the time that you signed them at year-end in each quarter period—quarter-end?

Mr. STEENKAMP. Ma'am, I became the CFO in April 2011. So I signed two SOX controls, the year-end, as you mentioned, as well as the first quarter and thereafter. As part of signing those controls, which are a snapshot at a point in time, you go through a lot of review, sub-certification, etc., over all of the controls across the world.

Nothing came to my attention—

Ms. WATERS. Again, let me just ask, if as the CFO you attest that your certifications are accurate and you know that they are not, you could face civil and criminal penalties. So with that, my question is: Were you confident that your internal controls were adequate at the time that you signed them at year-end and each quarter-end? You felt good about your signature?

Mr. STEENKAMP. My last sign-off was in June and nothing came to my attention at that point in time that indicated that I shouldn't sign it.

Ms. WATERS. So what you are telling us is that you were not confident that there were internal controls that were adequate at the time that you signed at year-end and at each quarter-end?

Mr. STEENKAMP. No, ma'am. I said nothing came to my attention as of June when I signed the last SOX certification that indicated there were any issues with internal controls.

Ms. WATERS. So you were confident?

Mr. STEENKAMP. At the time of my signing, nothing came to my attention to indicate otherwise.

Ms. WATERS. A lot of attention has been paid to the question of why MF Global's auditor, PricewaterhouseCoopers (PwC), gave the company a clean report in May, when their internal controls turned out to be compromised enough for them to lose $1.6 billion in customer funds.

To the best of your knowledge, did PwC ever raise concerns about MF Global's internal controls as they relate to the segregation of customer accounts while you were employed at the firm?

Mr. STEENKAMP. That is a very broad question and a very long period of time. I would say that we worked closely with PwC and they performed their own independent assessment of the controls. To the best of my memory, nothing came up during my time as CFO that indicated an issue with segregated funds, with segregation of client monies.

Ms. WATERS. So basically, PricewaterhouseCoopers gave the company a clean report in May, when the internal controls turned out to be compromised enough to lose $1.6 billion. Do you think that Pricewaterhouse was incompetent in doing that? That they should take some responsibility for that?

Mr. STEENKAMP. Ma'am, I can't comment on the independent review that PwC does. As of May, they did not raise any concerns, to the best of my memory.

Ms. WATERS. Yes, but do you not have to have confidence in the auditor? You have to feel that your auditor is competent and acting properly, and that you have no reason to question them?

Mr. STEENKAMP. The auditors perform their own independent assessment of controls and reach their own independent conclusion.

Ms. WATERS. I yield back.

Chairman NEUGEBAUER. I thank the gentlewoman.

The gentleman from Florida, Mr. Posey, is recognized for 5 minutes.

Mr. POSEY. Thank you, Mr. Chairman.

These are going to be easy questions, really. When we had the opportunity to question Mr. Corzine, I was advised and shocked, quite frankly, that he had not yet apparently been interviewed by the Department of Justice or any other authorities.

And so I just wondered, Mr. Steenkamp, have you been interviewed by the FBI, the Department of Justice, or any other Federal investigators?

Mr. STEENKAMP. My lawyers have done a proffer with all the different, I guess, regulatory agencies and investigative offices. That is the status of it at the moment.

Mr. POSEY. I don't know whether you are mumbling or I don't hear very well, but is that a yes or a no?

Mr. STEENKAMP. Through my lawyers, a proffer, yes.

Mr. POSEY. You haven't, face-to-face, talked to any investigators yet?

Mr. STEENKAMP. I have not, no.

Mr. POSEY. Okay.

Ms. Serwinski?

Ms. SERWINSKI. Yes, I have.

Mr. POSEY. You have talked to them face to face?

Ms. SERWINSKI. Yes, I have.

Mr. POSEY. How long ago?

Ms. SERWINSKI. I have spoken to them twice.

Mr. POSEY. Okay. What do you think was the most compelling question or line of questions that they had?

Ms. SERWINSKI. I don't recall. There were a lot of questions and a lot of topics discussed. I can't think of one off the top of my head that was more compelling than another.

Mr. POSEY. Okay.

Ms. Ferber?

Ms. FERBER. I am cooperating with the Department of Justice and I am scheduled to meet with them on April 6th.

Mr. POSEY. Okay. Have any of you been offered any immunity? Let the record show all three said "no."

You have all indicated you thought the investors should get their money back in one way or another. You have intimated that.

Ms. Ferber, what do you think the odds are for the investors to get their money back?

Ms. FERBER. I really have no—we have no basis to answer that. It is really going to be up to the trustee.

Mr. POSEY. Okay.

Ms. Serwinski?

Ms. SERWINSKI. I don't know. It depends on whether or not the people who hold—

Mr. POSEY. Okay.

Mr. Steenkamp?

Mr. STEENKAMP. Sir, it is still too early in the bankruptcy process. That is why we are there trying to work and maximize it.

Mr. POSEY. Who do you think is most at fault for investors losing money from an account that was supposed to be segregated?

Mr. Steenkamp?

Mr. STEENKAMP. Sir, because I don't know what actually happened, it is hard to answer that question.

Mr. POSEY. Okay.

Ms. Serwinski?

Ms. SERWINSKI. Would you repeat the question, sir?

Mr. POSEY. Ms. Ferber?

Ms. FERBER. Obviously, there was a terrible failure here of some kind, but what it was I don't know, since the SIPA trustee has controlled the investigation and all information since October 31st.

Mr. POSEY. Okay, thanks.

A good analogy is a gambler is at a casino and if the casino doesn't provide more credit once the gambler's chips are gone, he has to stop playing. He can't just reach over the table and take somebody else's chips. If he did, he would be in handcuffs quicker than you could say, "segregated accounts."

Isn't that, however, in essence what happened at MF Global?

Mr. STEENKAMP. I don't know what happened, sir.

Mr. POSEY. Ms. Serwinski?

Ms. SERWINSKI. I don't know.

Mr. POSEY. Ms. Ferber?

Ms. FERBER. I don't know.

Mr. POSEY. To be the experts of a company the size of MF Global, the scope of MF Global, there is sure a lot you guys don't know.

Is there anything else that you might know that you might want to share with us to give us a little bit more insight?

Ms. FERBER. I am happy to address any questions. That is extraordinarily broad.

Mr. POSEY. Take a shot at it.

Ms. FERBER. I don't know where to start. We were talking about what happened over a very few days in an area that was handled by serious—as far as I knew—professionals, well-staffed, expert in customer segregation rules, deeply within the finance and treasury and operations groups in Chicago.

I share your frustration in not knowing what has happened. But again, we learned about this hours before the bankruptcy filing. So I am—you may have more access to information than we do, but I share that frustration. And as I have done for my entire career, I would have wanted to dive in on the first moment of learning that there was a problem and understand it and do everything I could with it, but we have been cut off from that information.

Mr. POSEY. Were any of you contacted by the CFTC in their investigation?

Ms. SERWINSKI. The CFTC was at the meetings that I attended with the Department of Justice.

Mr. POSEY. Outside of that, were you contacted by them?

Ms. SERWINSKI. On occasion, after October 31st, I had—there were representatives of the CFTC in our offices.

Mr. POSEY. Would you have any idea why the CFTC would have been asked to cease and desist their own investigation?

Ms. SERWINSKI. I do not, sir.

Ms. FERBER. I doubt if they were.

Mr. STEENKAMP. I do not know, sir.

Mr. POSEY. Thank you, Mr. Chairman. I yield back.

Chairman NEUGEBAUER. I thank the gentleman.

And now the gentlewoman from New York, Ms. Hayworth, is recognized for 5 minutes.

Dr. HAYWORTH. Thank you, Mr. Chairman.

Here we have three intelligent and able people who were in positions of tremendous authority and responsibility at a firm that was handling—who should have been handling with all degree of integrity and trust the hard-earned monies of farmers and ranchers and other clients who depended on you to do the right thing.

And among you all, with no disrespect meant, and Ms. O'Brien, of course, who is conspicuous in her absence, it seems that there has been a great effort to maintain plausible deniability. That is certainly the impression with which one is left.

Ms. Ferber, in your written statement you note that as of Wednesday, October 26th, you received a call from a representative of the SEC informing you 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.

Now, that presumably would have triggered a question in your mind. Again, you are a highly capable person. You are a very skillful attorney; you are in a very responsible position. Didn't that trigger a question in your mind as to whether or not there was actually a problem with the segregated funds?

Ms. FERBER. I—it would not trigger a question in my mind that there was a problem, we would make sure we had the right people there to discuss the status of the segregated funds. And that is exactly what we did; we assembled for a detailed meeting with the SEC and the CFTC that day.

Dr. HAYWORTH. But you didn't inform—the firm didn't inform the regulators, as far as I can tell, of the deficiency, the shortages, until early Monday morning; correct, Ms. Serwinski, according to your testimony?

Ms. SERWINSKI. There was no regulatory deficiency that I was aware of until that Sunday evening.

Dr. HAYWORTH. But it sounds as though there was an insufficient level of communication between your department, Ms. Ferber, and yours, Ms. Serwinski. Is that, so to say, in the heat of everything that was going on? I would think that the top level at a firm like this, which is clearly, it is falling down around your ears practically, yet you say that, your testimony, obviously Ms. Ferber, you were heavily involved in trying to sell MF Global.

Would that not to an outside observer suggest that you were endeavoring as vigorously as you could to make sure that the potential buyers for MF Global were not alarmed by what would have been an overt violation of everything a firm like MF Global should be doing on behalf of their customers, and indeed, the law itself?

Ms. FERBER. Let me be very clear. I was never aware during the period you are describing or any time up until very late Sunday night or Monday morning that there were any issues regarding our segregated funds. I made it very clear I was making sure that we were frequently updating the regulators.

That included finance and treasurer colleagues who were directly involved in the various—in those updates. As we now know, the CME was in our offices doing a review on Thursday and Friday. The regulators were in our offices through the weekend.

There was every effort, at least in terms of myself and everybody I encountered, to be very transparent with the regulators.

Dr. HAYWORTH. Ms. Serwinski, your absence—were you out of the United States when these things were occurring, just out of curiosity?

Ms. SERWINSKI. No, I was not out of the United States.

Dr. HAYWORTH. Okay. It certainly would seem to me that, again, if you were trying to stave off the inevitable. When someone knew, and someone had to know, Mr. Corzine at the very least knew, one assumes, that there was very, very bad news coming.

Wouldn't it be in the company's best interest in terms of trying to salvage itself in a sale, that they keep as many of you "siloed" as possible, so to speak? It sounds as though there was a profound failure of communication within the company itself, that you guys don't know what happened, and that you are in this position now?

Should the American consumer, should the American investor, should our farmers and ranchers be concerned that there are other firms like MF Global which operate in this same way?

Does your experience with MF Global lead you to express any concern in that regard?

Should we be worried, Mr. Steenkamp?

Mr. STEENKAMP. Ma'am, I think once we better know what actually happened, what went wrong, then I think we will be able to answer that question.

Dr. HAYWORTH. Mr. Chairman, I yield back.

Chairman NEUGEBAUER. I thank the gentlewomen.

And now, Mr. Renacci is recognized for 5 minutes.

Mr. RENACCI. Thank you, Mr. Chairman.

Mr. Steenkamp, I am going to go back to internal controls, because we might not know the specifics, but would you agree—you are a CPA, you worked for Pricewaterhouse. I am a CPA; I understand internal controls.

You would admit that for this to occur, there had to be a breakdown in internal controls? You would have to admit that; correct? Yes or no? It is an important question, yes or no?

Mr. STEENKAMP. I—

Mr. RENACCI. And any time you have loss of money, you have a situation like this, there has to be a breakdown in internal controls; correct?

Mr. STEENKAMP. I don't disagree that something obviously went wrong.

Mr. RENACCI. And it would probably be internal controls, because internal controls is how you stop this from occurring, wouldn't you agree?

Mr. STEENKAMP. That could potentially have been what went wrong.

Mr. RENACCI. All right. I am going to go back to a follow-up on some of the questions Ms. Waters asked, but Pricewaterhouse identified the management override of internal controls as a risk to MF Global in their audit work papers produced in 2011. Are you aware of that?

Mr. STEENKAMP. I can't specifically recall that.

Mr. RENACCI. You are the CFO of the company and you don't—I actually have the work paper here that shows that they identified it. You are the CFO of the company and you were not aware that there was significant concern because of the override of internal controls, that your auditors had brought that to the attention of the company?

Mr. STEENKAMP. Sir, there are many discussions that are held on all the various controls. As you know, there are a hundred controls that operate in the firm, and so there are many discussions around them.

Mr. RENACCI. This is a significant one though.

Mr. STEENKAMP. Sir, we asked for any documents to be provided ahead of time for us to have a look. Unfortunately, we didn't get it and—

Mr. RENACCI. Let's keep going on, because again, your answers are going around in circles. And that is the problem I think most of my colleagues here are having.

MF Global's chief executive officer, Jon Corzine, stated in his prepared testimony that he actively managed MF Global's European sovereign debt repurchased to a majority portfolio.

Would this hands-on action by the CEO be some type of—wouldn't it be something they were cautioning? Wasn't this what they were talking about?

Mr. STEENKAMP. Sir, again, I am not sure whether that was controls for MF Global Inc., or any other entity, or whether it was for the global that it was referring to. But you know, just as a general point, I would say that any actions of Mr. Corzine would still have to fall within the control framework that exists at the regulated entity.

Mr. RENACCI. If the internal controls say that he can do anything he wants and nobody can stop him, that is not a very good internal control. And I think when he was here and I asked him the question, the only person who could stop him is the board. He could override anybody except the board. Would you agree that was the case?

Mr. STEENKAMP. Sir, I have no memory of any comment like that off the top of my head. I—

Mr. RENACCI. He did testify to that. But I am saying, were you aware that he could make any decisions he wanted and the only person who could override it—it is an internal control feature. You are the CFO.

Mr. STEENKAMP. No, I—

Mr. RENACCI. It is shocking that you are sitting here—

Mr. STEENKAMP. I am not aware of a control such as that.

Mr. RENACCI. You are not aware of it? You are not—wait a minute, you are not aware of internal controls like that?

Mr. STEENKAMP. No, I am not aware of a control that said he could override any action, sir.

Mr. RENACCI. Would that be a breakdown in internal control, in your eyes as a CPA, and somebody who worked for Pricewaterhouse in a global firm, would that be a breakdown in internal control if the CEO could actually make decisions like that without anyone else overriding it?

Mr. STEENKAMP. If the CEO—

Mr. RENACCI. Forget it is MF Global, any other company.

Mr. STEENKAMP. If the CEO could just override any internal control, I agree with you. There could be mitigating controls in place further down, but that is the—

Mr. RENACCI. You answered the question "yes," and then you started talking again. You did answer that it would be a problem in internal controls; correct?

Mr. STEENKAMP. If that is the control.

Mr. RENACCI. Right, I said it doesn't matter what company it is.

On October 22nd, I e-mailed a credit rating agency, Moody's. You stated, MF Global's capital and liquidity has never been stronger and that MF Global is in its strongest position ever as a public entity.

How could this be, when 1 week later, MF Global Inc.'s parent company filed for Chapter 11 bankruptcy?

Mr. STEENKAMP. Sir, that e-mail and that comment was made very early on Monday morning, the 24th. It reflected the capital and liquidity as of the end of Friday.

Mr. RENACCI. You are the CFO of this company. It is really shocking. I have been a business man my whole life. I would never be able to answer the questions they way you are answering them. You are the CFO.

We are talking about liquidity, we are talking about the strong corporate position. And you are testifying a week before it that it is stronger than ever and it files for bankruptcy 1 week later?

Mr. STEENKAMP. Sir, that comment was made before any of the downgrades that took place. It reflected a cash position off of two successful capital raises that we had completed in August with that cash still in hand. And it is—

Mr. RENACCI. This is in October, this is October 22nd. Again—
Mr. STEENKAMP. Correct.

Mr. RENACCI. —it amazes me, as the CFO of any company, that I would not know that we are in trouble, in the position you are in. I am sorry but, again, I am a business guy, I am a CPA. I have audited major global companies. I am totally shocked that you would sit here and say that you believed it was in the strongest position it could be a week before it filed bankruptcy.

Mr. STEENKAMP. Sir, that was prior to any downgrades; and conditions—

Mr. RENACCI. You should know prior to any downgrades, you are inside the company.

I am running out of time. I am sorry.

I yield back.

Chairman NEUGEBAUER. I thank the gentleman.

And now, the gentleman from Texas, Mr. Canseco, is recognized for 5 minutes.

Mr. CANSECO. Thank you, Mr. Chairman.

Ms. Ferber, hello.

Let me back up a little bit and follow up on some questions that Mr. Fitzpatrick asked you, and this is regarding the October 28th JPMorgan request to MF Global to certify and confirm that funds being sent from MF Global to JPMorgan were not customer assets.

How many iterations of these letters did you get?

Ms. FERBER. Three.

Mr. CANSECO. Why?

Ms. FERBER. When I was first asked to take a look at the certificate, I was also asked to call JPMorgan, understand what they were focused on, and try to, if appropriate, get them what they needed.

In that first call with JPMorgan, they indicated that very specifically the two related transfers that they were focused on, and that is what they were seeking assurances on.

As I tried to explain before, the certificate was extraordinarily broad and not something that any one individual could quickly sign. They could if they had time to make to make reasonable inquiry, if you know, potentially to look at that.

Mr. CANSECO. So it was your legal opinion that it was too broad and could not be signed. Did you discuss it with anybody else?

Ms. FERBER. It was too broad to quickly address what they needed, and they were very clear that what they needed was relating to two transactions.

Mr. CANSECO. Okay. Did you speak to anybody about any of those letters?

Ms. FERBER. I spoke to Edith O'Brien about the transfers that JPMorgan was focused on. She provided me with copies of the—actually the transaction reports on those two transfers. They matched what JPMorgan has described to me. And again, my very clear understanding was that if the compliance certificate was limited to those two transactions, those two transfers, she would be able to sign it.

Mr. CANSECO. Right. But did she have any—did she express to you any kind of concerns about whether she should sign it or not?

Ms. FERBER. Not if it related to those two transfers.

Mr. CANSECO. Were there any other transfers that she was concerned about?

Ms. FERBER. We did not discuss any others, because again, the compliance certificate asked somebody, one individual who was probably involved in some transfers, not others, to say that everything that has ever been done on those accounts from the beginning of time, to any time in the future, was in compliance. Again, the focus was that JPMorgan needed comfort right now, let's get them comfort on what they need, provided it is appropriate, and our main—

Mr. CANSECO. Did she ultimately sign any of those letters?

Ms. FERBER. I understand that she did not.

Mr. CANSECO. She did not. And do you know why?

Ms. FERBER. No, I don't.

Mr. CANSECO. You don't. Did you ever talk to Mr. Corzine about these letters?

Ms. FERBER. Only when he initially asked me to take a look at it, and he may have that afternoon said, did you call JPMorgan yet? Something like that. But that was my only conversation about it.

Mr. CANSECO. Why would MF Global not be able to certify, as Ms. O'Brien did not, that the firm had not used customer funds on October 28th and it would not use them in the future?

Ms. FERBER. Actually, first off, the certification is a bit broader than that. It was every transfer within compliance with, I believe, it was all CFTC rules.

I certainly expect that we would be able to make that with time and that somebody would have to go back and make reasonable inquiry, and should be able to make that representation. Not one individual sitting there that day.

Mr. CANSECO. Pardon me for interrupting you, but aren't these forms that they sent out from JPMorgan or any other house, aren't those normal forms? Aren't those standard forms?

Ms. FERBER. Not to my understanding. I had certainly never seen one before, broad like that. And certainly in my general legal experience, asking somebody to represent, make a representation today that everything they might do in the future is in accordance with certain rules is not something that is appropriate. You could say, I have procedures in place to reasonably assure they might be, or something.

Mr. CANSECO. Were you not concerned about their concern?

Ms. FERBER. First, they did not express a concern. They said they saw these transactions, because of the size, whatever, and because of certain compliance procedures they had in place because of their own history or experience, that they were inquiring about those.

I knew that person, Ms. O'Brien, is somebody for whom I had tremendous respect, and I knew that the futures industry generally had great respect for her. She is the person I would rely on generally with regard to Rule 125 in—and she is—

Mr. CANSECO. Don't run the clock on me, please. I have very little time here.

So on Sunday, October 30th, you were copied on an internal MF Global e-mail at 4:27 p.m., in which one employee asked another

whether it was permissible to send the CFTC a customer segregated funds statement that showed a $952 million deficiency. Why would MF Global employees hesitate to share such vital information with their regulator?

Ms. FERBER. I am not aware that they would be hesitant. In fact, these regulate—remember, the CFTC was in our offices here in New York, CME was in the offices working with those people in Chicago.

I think, if had said this is the calculation in these complex times and all, you would have some reasonable signoff, and let people know that.

Mr. CANSECO. Did you—

Ms. FERBER. And I believe the signoff people said yes, send the report.

Mr. CANSECO. All right. So then you instructed employees to release the information to the CFTC?

Ms. FERBER. I did not, but if I recall correctly and I did not review it here, but if I am recalling the e-mail you are referring to, I think you said I was copied on it, somebody else would usually respond yes, give it to them.

Mr. CANSECO. Okay. Let me, before I run out of time, Mr. Chairman, if I may have with Mr. Steenkamp, on what date did there begin to be a shortfall in customer segregated funds at MF Global?

Mr. STEENKAMP. Sir, I have no memory of knowing about any shortfall prior to the Sunday. On the Sunday, we found out that there was a shortfall, and originally we had heard that the shortfall was for the Friday, but that there might have been for the Thursday as well, although that might just have been an accounting error.

And at the time we were finding out, it was just so unbelievable that there could be a shortfall that everyone was under the impression Sunday night that there was some accounting reconciliation that just wasn't working and that was causing it. And that is why, as you have heard in the testimonies, there was a big effort to work together to try and resolve that.

Mr. CANSECO. But you are ultimately aware, especially with the SIPA trustee, that the shortfall began on October the 26th; is that correct?

Mr. STEENKAMP. I don't work with the SIPA trustee, so I can't—

Mr. CANSECO. But you are aware of October 26th being the day of the shortfall?

Mr. STEENKAMP. I have been reading in the papers that it was the 26th.

Mr. CANSECO. You are aware of it? Are you aware, or are not aware of the 26th of October being the shortfall date?

Mr. STEENKAMP. I am aware of what I am reading.

Mr. CANSECO. From whatever source.

Mr. STEENKAMP. Yes.

Mr. CANSECO. Okay. The shortfall began on October 26th and grew until the company went bankrupt on the 31st. Is that correct?

Mr. STEENKAMP. I don't have that knowledge, sir.

Mr. CANSECO. My time is way over. I thank you.

Chairman NEUGEBAUER. I thank the gentleman.

The gentleman from California, Mr. Royce, is recognized for 5 minutes.

Mr. ROYCE. Thank you, Mr. Chairman.

Ms. Ferber, did you have the opportunity to speak to Gary Gensler prior to MFG declaring bankruptcy?

Ms. FERBER. Yes.

Mr. ROYCE. In your opinion, were his priorities protecting customer funds, or making sure the company was sold to inter-dealer brokers?

Ms. FERBER. My conversations with Mr. Gensler were related to two topics. He was very focused on the customer funds. And he, along with his colleagues, wanted an update on where we were in concluding the sale of the firm.

Mr. ROYCE. Okay. Let me also ask you, to your knowledge was Mr. Corzine in contact with Mr. Gensler prior to MFG declaring bankruptcy?

Ms. FERBER. I assume you are talking about in those last—in those very last days?

Mr. ROYCE. Prior to bankruptcy, right.

Ms. FERBER. I am not aware if they had any discussions.

Mr. ROYCE. So there wasn't any conversation Mr. Corzine had with you about his conversations with Mr. Gensler?

Ms. FERBER. That is correct, to the best of my recollection. Mr. Gensler may have been—may or may not have been—I am not sure, on a call with a large number of regulators, being updated. There was a call at 2:00 on Saturday afternoon with many regulators. And I do not know whether Mr. Gensler was on that call.

Mr. ROYCE. Let me ask you another question. If we go back to June of 2011, FINRA was concerned about MF Global's European debt exposure. And FINRA directed MF Global to increase its capital requirements. Did you agree with FINRA's directive on that score?

Ms. FERBER. But just as to the timeframe, my understanding, and I was not involved in the early conversations. But over a period of time, probably starting in June or early July, FINRA had conversations as far as I know with the firm about their view of the appropriate capital treatment for some of our positions. And those conversations ultimately led to their determination, I believe, quite late in August of 2011 that a different capital treatment was appropriate.

Mr. ROYCE. Then let me ask you this: Did Jon Corzine agree with it at the time? He apparently didn't, because he flew to D.C. to meet with the SEC to set them to overrule FINRA. Correct?

Ms. FERBER. First, I should say that my accounting colleagues, our outside counsel, PricewaterhouseCoopers, all disagreed, to my knowledge, with FINRA's view on what the appropriate capital treatment was for these positions under the rules as they were written. And so yes, the firm did make a determination. And to some extent this certainly was a topic that was discussed with outside counsel that there should be a meeting directly with the SEC on something so important.

Mr. ROYCE. Let me go to another question, which is interesting.

Ms. Serwinski testified that she would not have approved the $173 million transfer on October 28th to cover MF Global's over-

draft. Do you remember that? Do you find it interesting that MF Global blew past the same capital requirements that Jon Corzine lobbied for?

Ms. FERBER. First, I think the—as I recall Ms. Serwinski's testimony, was basically certain unassumed facts. If there was a concern that it violated certain rules, then she would not have approved the transaction. So, that is that part.

I am not sure that you said violated the same rules that Mr. Corzine lobbied against. I need a little help understanding the question, Mr. Royce. I am glad to address it.

Mr. ROYCE. My time has expired—

Ms. FERBER. Sorry.

Mr. ROYCE. —but I want to thank you for your testimony here today. I appreciate it.

Chairman NEUGEBAUER. I thank the gentleman.

We are going to just kind of have a little bit of follow-up here. But what I wanted to do, because I think we kind of danced around this issue a little bit—this is a glass of water. And I hope you can see that black line. Can you all see the black line there?

Ms. FERBER. Yes.

Mr. STEENKAMP. Yes.

Chairman NEUGEBAUER. So, this is the segregated account. And so the segregated account, all of the water below the line, it belongs to the customers. And all the water above the line—and so that is illegal for, and common practice for, the company to keep excess company funds in the segregated account. Is that correct? You would sometimes have company funds and customer money in the segregated account? Right?

Ms. SERWINSKI. Yes.

Chairman NEUGEBAUER. This is not rocket science. And so this is the company's account. And so, this little black line here was what it would take to get the company back from being overdrawn. So, what the only way that customers lose money is when you pour—you take some of the company's money out. And as long as you are at the line, you are in compliance. Is that correct?

Ms. FERBER. Yes.

Ms. SERWINSKI. Yes.

Chairman NEUGEBAUER. When you do this, though, are you in compliance?

Ms. FERBER. No.

Chairman NEUGEBAUER. No. So the only way customers can lose money is when you take their money and you put it in the company's or somewhere else. Is that right? Because you weren't—and what you are supposed to do is if you take money out and borrow it, you are supposed to securitize it. So theoretically, if this does not have water in it, it has collateral in it. Is that correct?

Ms. SERWINSKI. Yes.

Chairman NEUGEBAUER. Okay. So, now we have that clear. Everybody understands that money was lost because money was taken out of that segregated account that belonged to farmers and ranchers and investors, right? Does anybody disagree with that? Because that is the only way you can do that. How else does the money get out if you don't take it out? This is not rocket science, folks—

Ms. FERBER. Based on what I know—

Chairman NEUGEBAUER. Can you show me, Mr. Steenkamp, can you tell me another way where customers would lose their money, other than the money being taken out?

Mr. STEENKAMP. They could. The only other way is they could be losing money on their trades, if they are making losses.

Chairman NEUGEBAUER. There might be losses but the customer's account would go down proportionately.

Mr. STEENKAMP. Correct. Absolutely.

Chairman NEUGEBAUER. So, Mr. Steenkamp, I want to go back to something that is kind—and I know we are all perplexed there. Are you familiar with a Mr. Roseman and a Mr. Stockman?

Mr. STEENKAMP. Yes. They were the chief risk officers of the firm.

Chairman NEUGEBAUER. And were you aware that they made—both of them made recommendations that the repo-to-maturities in the foreign sovereign debt were a potential risk to the company? Were you aware of that?

Mr. STEENKAMP. Sir, I only became CFO in April. So, what I was aware was that there were numerous and many discussions between the board and Mr. Corzine and the chief risk officer in the board meetings around risk limits and risk parameters.

Chairman NEUGEBAUER. Are you aware of a document called "Break the Glass" that was put together by your firm?

Mr. STEENKAMP. I am, sir.

Chairman NEUGEBAUER. Who prepared that document?

Mr. STEENKAMP. There was a working group put together in the firm to—

Chairman NEUGEBAUER. And who was in that working group then?

Mr. STEENKAMP. There were members of treasury, members of finance, members of risk, treasury operations. Because that was like a scenario, straight scenario analysis-type document. And so, it required the input—

Chairman NEUGEBAUER. Did you participate in that?

Mr. STEENKAMP. I did, yes.

Chairman NEUGEBAUER. When did you put that document together?

Mr. STEENKAMP. The original request for the document was made in August, I believe, by the board.

Chairman NEUGEBAUER. And it was completed when?

Mr. STEENKAMP. It was presented to the board sometime around the middle of October.

Chairman NEUGEBAUER. Isn't it kind of ironic that you put together a "Break-the-Glass" scenario and you finish it 14 days before you declare bankruptcy?

Mr. STEENKAMP. Sir, it is very prudent and common to have a document like this. I think all firms do it. And the initiation of it was many months prior.

Chairman NEUGEBAUER. Do you disagree with any analogy that I made here that the only way that the customers would have lost money is if people took money out of that account and didn't put it back? Yes or no?

Mr. STEENKAMP. Except for the example I made—

Chairman NEUGEBAUER. No, just yes or no. We are not going to "except." The only way customers lose money other than if they lose money on their positions, but it is their money. But if you net out their positions, the only way that the customers lost over a billion dollars is if somebody took more than money out than they were supposed to. Yes or no? Yes or no?

Mr. STEENKAMP. That appears reasonable, sir.

Chairman NEUGEBAUER. Yes or no?

Mr. STEENKAMP. Sir, I am not an expert enough on that—

Chairman NEUGEBAUER. Yes—

Mr. STEENKAMP. —to be able to know whether there are other ways in which—

Chairman NEUGEBAUER. I am not talking about what happened. I just want to truly get some definitive answer here. Under the way that the law operates, the only way someone can lose money is—from a customer, other than his net position, is that money is taken out of an account that shouldn't have been taken out. Yes or no?

Mr. STEENKAMP. Sir, I guess what I am saying is I don't have enough knowledge to be able to answer that.

Chairman NEUGEBAUER. I am appalled that you can't answer a simple question like that. I think you are not being honest with this panel.

Ms. Serwinski, do you agree with the analogy that the only way that customers, net of their positions, lose money is if people take money out of the account and do not put it back?

Ms. SERWINSKI. There is a permissible secured—a secured calculation.

Chairman NEUGEBAUER. But it had to be—there would be collateral in that other—

Ms. SERWINSKI. The secured calculation rules allow and permit if a client gave the firm $100, under the secured rule there is an alternative method available that does require—can require—less than that $100 be required to be maintained in the secured environment.

Chairman NEUGEBAUER. But if we—I am not talking about security, but I am just talking about if this was the money that belonged to customers, and you poured it all out, that is the way you lose money, right?

Ms. SERWINSKI. I am—if—yes. Yes.

Chairman NEUGEBAUER. Okay. Thank you.

Ms. Ferber—

Ms. FERBER. I think that is correct.

Chairman NEUGEBAUER. This is where you lose money for customers, right? If you took money out that shouldn't have been taken out?

Ms. FERBER. With the exception of what Ms. Serwinski described, yes, you still have an obligation to return customer funds, be able to return customer funds. I would agree with you, yes.

Chairman NEUGEBAUER. Exactly. And so what happened on—when they declared bankruptcy was—nobody put the money back, did they?

Ms. FERBER. Not to my knowledge.

Chairman NEUGEBAUER. Yes.

Are there any other Members who want to follow up with this panel?

Mr. Pearce, yes?

Mr. PEARCE. Mr. Steenkamp, I am sorry. I was looking through my papers and I don't find your resume. Where did you get your education?

Mr. STEENKAMP. I am from South Africa, so I did my graduate degree and post-graduate degree in accounting in Johannesburg.

Mr. PEARCE. Accounting?

Mr. STEENKAMP. Correct.

Mr. PEARCE. What kind of a grade point average did you graduate with, just more or less?

Mr. STEENKAMP. It works differently in South Africa. It is percentages. So I probably had an average was around 78 percent, somewhere there.

Mr. PEARCE. How many hours of accounting did you have?

Mr. STEENKAMP. I don't know off the top of my head in hours. It is 4 years: 3 years, graduate; and 1-year, post-graduate. And then, you are at your CPA equivalent to C.A..

Mr. PEARCE. All right. I am just trying to establish that you do remember things in the past, but you don't remember some really, really, really, really big significant things from less than 6 months ago.

I am just trying to bring that to the attention of the public, who is watching today, because they are wondering who is in charge of all these companies up here.

Ms. Serwinski, when we have an overage, when we have taken, we have dipped into those segregated funds like the water poured out of that glass and it is not secured, do you have to—was there a requirement to notify someone?

Ms. SERWINSKI. Yes, there is a report—

Mr. PEARCE. Who would have to be notified?

Ms. SERWINSKI. The regulators would all have to be notified, and we did—

Mr. PEARCE. Nobody inside the institution?

Ms. SERWINSKI. They would be notified, but it is not—the regulatory requirement is that you report—

Mr. PEARCE. But you didn't have an internal process that would say, ooh, we just kind of messed up here. Let's see that we don't do it again.

And the treasurer or the assistant treasurer, I think is who we ascertained earlier could have made those calls. So you have a couple of people and maybe they have authorized the dipping into those funds out of that little paper and out of that little plastic glass.

And so, who would they have to notify that, who had just poured the funds out here?

Ms. SERWINSKI. There would have been a process whereby the situation would have been escalated to, at the very least, our SOX committee to rectify whatever contributing factors existed that led to—

Mr. PEARCE. So there was somebody notified?

Ms. SERWINSKI. Yes.

Mr. PEARCE. Yes, so you had a process.

Ms. SERWINSKI. You are right, you are—

Mr. PEARCE. You had a process. Okay. So we know—

Ms. SERWINSKI. —required, yes.

Mr. PEARCE. So we dipped into those funds and we are supposed to securitize them and we are supposed to return them by the end of the day or something and supposed to balance all the accounts and all that jazz.

And we didn't do that. And so, at what level does it—did you ever discuss at what level it should go to Mr. Steenkamp? These guys are the umbrella, and so if we are doing things that take people's money away from them without losing it, if you lose it fair and square, that is fine.

But if the shepherd takes the wool off the sheep and sells it on the side, so at what level did you—should you—have notified, should have—not you, because you are out and I understand.

And at what level should Mr. Steenkamp have been notified, or maybe Ms. Ferber, because now we are dealing with issues that somebody is going have to answer some questions for someday.

Surely you all have discussed that. Is there a level?

Ms. SERWINSKI. Once the numbers were confirmed to be a true deficit, I believe they were informed.

Mr. PEARCE. I am sorry. Say it again.

Ms. SERWINSKI. Once it was confirmed that the $900 million was a true and factual shortfall—

Mr. PEARCE. Was $900 million the threshold, or would $100 million—

Ms. SERWINSKI. No. One dollar would have been the threshold, sir.

Mr. PEARCE. Now, so you got back on Thursday and nobody had been notifying anybody and everybody just said okay. Mr. Steenkamp saying in his testimony I don't—that wasn't my deal. I wasn't really concerned. I don't much care if they were doing that.

But what was the—surely there was some sequence that somebody was supposed to say the place is on fire.

Ms. Ferber, you didn't—you were saying that it never rose to your attention, that it was not really your concern. At what point would you be concerned with missing customer accounts?

Ms. FERBER. I would be concerned with any missing customer funds. I—

Mr. PEARCE. Okay. So if she found that on Wednesday—she says that we have dipped in and maybe you don't have it collateralized and that was on Wednesday or Thursday.

Wednesday or Thursday it really became evident.

Ms. SERWINSKI. Excuse me, sir—

Ms. FERBER. Yes.

Ms. SERWINSKI. —I don't believe I said that. The firm was in regulatory compliance to the best of my knowledge on Wednesday.

Mr. PEARCE. So you are saying that we did it all on Saturday night? We did it all on Saturday? You are saying there was no build-up over time?

Ms. SERWINSKI. No, what I am saying, sir, is that the firm was in regulatory compliance with the excess segregated and secured rules until I was aware on Sunday night that we were not in compliance on Friday, close of business Friday.

Mr. PEARCE. So you think that entire billion went in one day? Okay.

Thanks, Mr. Chairman. I yield back.

Chairman NEUGEBAUER. Thank you.

Any other Members? All right.

Mr. Posey, you will be the last one.

Mr. POSEY. Thank you, Mr. Chairman.

Ms. Ferber, I appreciate you actually trying to help us unravel some of this. You are the only one who has answered questions beyond a yes or a no, or I don't know, mostly I don't knows. And we do appreciate that, your willingness to do more than dodge questions.

Mr. Steenkamp, is it correct that your work now consists primarily of making assets available for trustee-free?

Mr. STEENKAMP. Yes, one of the top priorities—

Mr. POSEY. Okay. The answer is yes.

Are the assets you recover for the benefit of customers?

Mr. STEENKAMP. Sir, I am not an expert in bankruptcy. I don't know how the—

Mr. POSEY. Okay.

Mr. STEENKAMP. I don't know—

Mr. POSEY. Or, do they go to the creditors and MFG Holdings?

Mr. STEENKAMP. Sir—

Mr. POSEY. You don't know that either.

Mr. STEENKAMP. I am just—

Mr. POSEY. Okay. So you wouldn't know if any of the assets he pays out would reduce the potential pool of assets available to pay back customers?

Mr. STEENKAMP. Sir, that is for the trustee to determine if the assets are eligible—

Mr. POSEY. You don't know that? You have no idea? You absolutely have no idea?

Mr. STEENKAMP. Sir, I—

Mr. POSEY. Under oath, you have no idea what I am talking about?

Mr. STEENKAMP. No, sir, I believe the Chapter 11 trustee obviously of—is of the holding company, so he works with the creditors.

But I am not sure how that process works around allocating out assets amongst the firms and paying—

Mr. POSEY. Did Mr. Freeh recently propose paying you, and others like Mr. Abelow, substantial bonuses for helping recover assets?

Mr. STEENKAMP. Sir, there had been one discussion, but no bonuses have been proposed as of yet. It was being finalized.

Mr. POSEY. Do you believe you deserve a bonus?

Mr. STEENKAMP. Sir, I believe for all the hard work that we are doing, we are just asking to be fairly compensated. We are not part of the discussions on whether that includes bonuses or not.

Mr. POSEY. Yes, fairly compensated in the future, but not decompensated for the humongous losses that you might have been culpable in.

Will you accept bonuses if the motion is approved by the bankruptcy court?

Mr. STEENKAMP. Sir, if the trustee determines that is fair and reasonable compensation.

Mr. POSEY. Because you told us how brokenhearted you are over the losses suffered by these investors?

How do you think the customers will feel about the idea of using money that could potentially be used to reimburse them for the money stolen from their segregated accounts underneath the watch of you and others, to pay for the bonuses and legal fees of the very people who were running the company that looted the accounts?

Mr. STEENKAMP. Sir, I am sure the customers want all their money returned.

Mr. POSEY. Are you familiar with the principle called "willful blindness?"

It is a term used when an individual seeks to avoid similar criminal liability for a wrongful act by intentionally putting himself in a position where he claims to be unaware of facts which would render him liable.

Mr. STEENKAMP. I am not specifically aware of that, no.

Mr. POSEY. Okay. Do you have any idea whether that applies in this case or not?

Mr. STEENKAMP. I would assume if one takes the Fifth, for example, that is something one is concerned about.

Mr. POSEY. Okay.

Ms. Ferber, who was involved in the decision to put MF Global Inc. into SIPA liquidation?

Ms. FERBER. First just let me say, we had bankruptcies—

Mr. POSEY. All right. Let me make it shorter. Anyone from the SEC, the CFTC, or representing creditors or trading counterparts?

Ms. FERBER. The SEC would have been involved only—one cannot file themselves under SIPA. I believe it is the SEC that has to make that application or do that.

I also—obviously there was a period of time overnight where the regulators were deep in conversations among themselves.

Mr. POSEY. Was Mr. Cook with the SEC involved?

Ms. FERBER. He was certainly one of the people who organized the conference call where we asked to notify the regulators—

Mr. POSEY. Okay.

Ms. FERBER. —early in the morning on the 31st.

Mr. POSEY. Who was involved in placing MFGH, the holding company, in Chapter 11, allowing the assets to flow to creditors and counterparties?

Ms. FERBER. The board made the determination that the company would file for bankruptcy.

Mr. POSEY. Okay, the board and particularly, anyone in particular on the board?

Ms. FERBER. No, the board of directors.

Mr. POSEY. Okay.

I yield back.

Chairman NEUGEBAUER. I thank the gentleman.

And I thank this panel. At this time, you are dismissed, and we will call up the second panel. Thank you for coming.

I want to welcome the second panel: Ms. Diane Genova, deputy general counsel, JPMorgan Chase & Company; Mr. Daniel Roth, president and chief executive officer of the National Futures Association; and Ms. Susan Cosper, technical director and chairman,

Emerging Issues Task Force, Financial Accounting Standard Boards.

I would remind each of you that your written statements will be made a part of the record and we would ask you to summarize your testimony in 5 minutes.

Ms. Genova, you are now recognized.

STATEMENT OF DIANE GENOVA, DEPUTY GENERAL COUNSEL, JPMORGAN CHASE & CO.

Ms. GENOVA. Thank you.

Chairman Neugebauer, Ranking Member Capuano, and members of the subcommittee, my name is Diane Genova. I am the deputy general counsel for the investment bank of JPMorgan Chase. As such, I was one of the JPMorgan officials dealing with MF Global over the weekend before it filed for bankruptcy protection on October 31, 2011.

I appreciate the opportunity to appear before the subcommittee to describe those events and I would also like to thank Chairman Bachus for noting JPMorgan's cooperation in appearing before this committee.

As I will describe in more detail, JPMorgan professionals worked through the week of October 24th to accomplish two main goals: first, to provide first-rate operational clearing and settlement support and services to MF Global; and second, to make sure that we did not wind up in a position where we had extended credit to MF Global without proper collateral and security protections.

To understand what we were trying to accomplish, let me describe briefly the banking services that JPMorgan, along with other financial institutions, provided to MF Global. These are fairly standard services that clearing banks typically provide to support the day-to-day broker/dealer and futures commission merchant operations of firms like MF Global.

First, MF Global maintained a large number of cash demand deposit accounts, much like a retail checking account, at JPMorgan, as well as other banks.

Second, MF Global used JPMorgan, as well as Bank of New York Mellon, and other banks for clearing services.

Third, JPMorgan served as the administrative agent for two committed revolving credit facilities, one consisting of 22 banks and one consisting of 10 banks that MF Global had put in place.

Finally, MF Global had entered into securities lending and repurchase arrangements with JPMorgan. These arrangements served as a financing tool for MF Global.

As noted in my written statement, we worked hard to assist MF Global, our client, when it began experiencing problems. These efforts, which would in turn benefit MF Global's customers, included several actions.

We sent a JPMorgan team to MF Global's offices on Friday, October 28th, to assist MF Global with its ongoing efforts to unwind its securities lending arrangements. By doing so, MF Global was able to regain access to the securities it had posted as collateral and then sell those securities to generate additional liquidity.

JPMorgan also facilitated an auction of a portfolio of $4.9 billion of securities held by MF Global involving multiple market partici-

pants. This was another way to assist MF Global in its ongoing efforts to generate liquidity.

We also agreed to provide same-day liquidity for the auction sales where JPMorgan was acting as agent for MF Global with respect to securities custodied with JPMorgan. This measure provided MF Global with liquidity on the fastest possible basis, far faster than the typical one to two business days for regular way settlement for such securities trades.

Since the bankruptcy, JPMorgan has engaged with committee staff to assist the subcommittee in its examination. Among other items, we have shared our perspective on the events surrounding overdrafts that MF Global had in accounts with JPMorgan in London, and the questions we asked MF Global to make sure that customer segregated funds were not used to satisfy those overdrafts.

In my written submission, I explained the principal points of contact between MF Global and JPMorgan. I also discuss the circumstances on Friday the 28th that caused us to ask MF Global to confirm in writing that they were in compliance with their customer segregation obligations.

Briefly, I took the lead in reaching out to Laurie Ferber, MF Global's general counsel, and Dennis Klejna, MF Global's deputy general counsel, and I received assurances from both of them that MF Global understood the customer segregation rules and had complied with them.

Over the course of our conversations, we discussed the contents of a letter that we had requested to confirm MF Global's compliance with customer segregation rules.

As you heard Ms. Ferber testify earlier today, she and her deputy, Mr. Klejna, raised concerns about the scope of our proposed letter. We narrowed the letter as they requested. And as Ms. Ferber also confirmed earlier during this hearing, we were told the narrowed version of the letter would be signed.

Although the letter ultimately was not signed that weekend before MF Global filed for bankruptcy, we believed we had been given clear and credible assurances that the transfers were lawful.

I would like to thank the committee for the opportunity to share with you our perspective on this matter, and I am happy to answer any questions you may have.

[The prepared statement of Ms. Genova can be found on page 89 of the appendix.]

Chairman NEUGEBAUER. Thank you.

Mr. Roth, you are recognized.

STATEMENT OF DANIEL J. ROTH, PRESIDENT AND CHIEF EXECUTIVE OFFICER, THE NATIONAL FUTURES ASSOCIATION (NFA)

Mr. ROTH. Thank you, Mr. Chairman.

My name is Dan Roth and I am the president of the National Futures Association.

For the longest time, for decades and decades, the futures industry had an impeccable reputation and a well-earned reputation for financial integrity. Obviously, the events surrounding MF Global have dealt a blow to that reputation and I think all of us involved in the regulatory process need to be thinking about the types of

regulatory changes that we can make to try to prevent this kind of an occurrence from ever happening again.

At NFA, when we considered the changes that we might implement, they fell into three basic categories. There were certain changes which we felt we could accomplish only in coordination with other self-regulatory organizations. There are other changes that we thought we could implement just through NFA rulemaking. And there is a third category of changes that we think would require either congressional or CFTC action.

And what I would like to do today is just sort of describe for you where we are in each of those three categories and what our initial recommendations have been.

With respect to the issues involving coordination with other self-regulatory bodies, those issues involve how we monitor firms for compliance with segregation requirements, and coordination with the other SRO's is very, very to us critical here.

All FCM's are required to be members of NFA, but we are the designated self-regulatory organization only for those FCM's that are not members of the exchanges. So it is very important for us to work with the exchanges to try to develop these changes.

With that in mind, back in December the Chicago Mercantile Exchange and NFA jointly announced the formation of an SRO committee. The other participants included the exchange members of NFA, the Kansas City Board of Trade, the Intercontinental Exchange, and the Minneapolis Grain Exchange.

That group has been meeting for the last several months. We have taken a look at what we do and how we do it and how we can do it better. And we have developed some initial recommendations. We reviewed those recommendation with other committees at NFA, including members of the FCM community and our public directors, and we just several weeks ago announced four initial recommendations. And these are just initial recommendations. There is more work to be done.

But those four basically are, number one, to require all FCM's to submit daily segregation reports with their designated self-regulatory organization. Right now, that obligation extends only to those FCM's that are members for which NFA is the DSRO. We want to extend that to all FCM's.

In our experience that will be a very useful risk management tool, because you can see not just where the firm is on a given day, but you can spot trends, you can spot fluctuations, you can spot things that seem unusual and that catch your attention and that will prompt further action.

The second change that we are recommending has to do with what we call a segregation investment detail report. Currently, we get these reports on a monthly basis from those FCM's for which we are the DSRO.

These reports show how customer funds are being invested and where those investments are being held. We want to take that requirement, and again, it extends to all FCM's, and move those reports from a monthly to a bi-monthly basis.

The third thing we want to do is perform more periodic spot checks for FCM compliance with segregation requirements. Each FCM is audited twice a year: once by its DSRO; and once by its

outside accounting firm. We want to supplement those examinations, which go into great detail testing for segregation compliance, with periodic surprise visits to monitor compliance with various components with the segregation regime.

The fourth rule that we are proposing has to do with accountability. We want to make sure that if a firm is drawing down its excess segregated funds, that if a firm is making in any given day, draws down its excess seg by 25 percent, then two things have to happen: number one, a principal of the firm, such as the CEO or the CFO, has to sign off on those disbursements that are drawing down the segregated funds; and number two, there has to be immediate notification to the regulators.

That will not only improve accountability and also give regulators important notification about potential problems to which they can react, it will also capture intraday transactions. The daily segregation reports that we get now just reflect the firm's status as of the close of the previous day. It does not—if a firm were to wire funds out of segregation during the day and wire them back in by the end of the day, that will not be captured in the daily segregation reports. They would be captured under this rule.

Those are the four initial recommendations of the SRO group. Let me mention that we also have a special committee of our public directors that is looking at other issues. One of those is FCM disclosures. We want to make it easier for customers, especially small customers, to do due diligence on their FCM's.

We are trying to identify that information which would be most meaningful to customers without overwhelming them. We want—it is information like the firm's capital requirement in its excess capital, it is segregation requirement and it is seg. Maybe the amount of leverage the firm employees, whether it allows trading as a principal that is not hedge trading. We want to identify those pieces of information and then require FCM's to disclose that information to NFA so that NFA will then put it on its Web site and make it available for customers to try to make it easier for them to do their due diligence.

Let me emphasize again that these are our initial recommendations. Both our special committee and the SRO committee continue to work. There are other issues we want to look at, including possible changes to the Bankruptcy Code, and we look forward to working with the industry and the Commission and Congress to try to develop the regulatory changes that are needed.

Thank you.

[The prepared statement of Mr. Roth can be found on page 98 of the appendix.]

Chairman NEUGEBAUER. Thank you.

Ms. Cosper, you are recognized for 5 minutes.

STATEMENT OF SUSAN M. COSPER, TECHNICAL DIRECTOR, FINANCIAL ACCOUNTING STANDARDS BOARD (FASB)

Ms. COSPER. Chairman Neugebauer, Ranking Minority Member Capuano, and members of the subcommittee, my name is Susan Cosper and I am the technical director of the Financial Accounting Standards Board, also known as the FASB. I oversee the staff work associated with the projects and the Board's technical agenda. I

would like to thank you for this opportunity to participate in today's important hearing.

I understand the subcommittee would like me to explain the current accounting and reporting standards related to repurchase agreements. I will do my best to do so, but first, I would like to give you a brief overview of the FASB and the manner in which accounting standards are developed.

The FASB is an independent private sector organization which operates under the oversight of the Financial Accounting Foundation and the Securities and Exchange Commission. Since 1973, the FASB has established standards of financial accounting and reporting for public and private entities and not-for-profit organizations. Those standards are recognized as authoritative, Generally Accepted Accounting Principles, or GAAP, by the SEC for public companies and by the American Institute of Certified Public Accountants for other nongovernmental entities.

An independent standard-setting process is the best means of ensuring high quality accounting standards, since it relies on the collective judgment and input of all interested parties through a thorough, open, and deliberative process. The FASB sets accounting standards through processes that are open, afford due process to all interested parties, and allow for extensive input from all stakeholders.

It is important to note that although FASB sets the accounting standards, it does not enforce them. The SEC has the ultimate authority to analyze whether public companies have complied with accounting standards. The PCAOB is charged with ensuring that auditors of public companies have performed an audit in accordance with auditing standards.

Let me try now to explain how repurchase agreements work and how they are treated under current accounting standards. In a typical repurchase agreement, a company, also known as a transferor, transfers securities to a counterparty, the transferee, in exchange for cash with a simultaneous agreement to the counterparty to return the same or equivalent securities for a fixed price at a future date.

The price paid by the transferor includes an interest rate, which is like a lending rate for secured borrowing. The motivation for entities to use repurchase agreements is generally finance related: the desire to borrow or lend cash.

Current accounting guidance results in most repurchase agreements being accounted for as secured borrowings. The accounting guidance is based on the concept that the transferor maintains effective control of the security under most repurchase agreements, since the transfer is temporary and because the transferor has to repurchase the asset before its maturity.

Another type of repurchase agreement, a repo-to-maturity, is accounted for as a sale with a separate agreement to repurchase the security. In these transactions, the transferor never actually gets back the transfer security. Because the repurchase date is the same as the securities maturity date, the counterparty instead redeems the security and the transferor simply pays the transferee the difference between the proceeds received by the transferee and the redemption in the agreed-upon repurchase price.

In this transaction, the transferor does not have effective control over the transfer security. I understand that a specific question is how a loss in value in the underlying security would be accounted for if the repurchase agreement is considered a secured borrowing or sale?

In a transfer of the securities that is accounted for as a secured borrowing, the transferor recognizes the cash as proceeds of the transaction, together with the liability for the obligation to return the cash to the transferee. The security remains as an asset on the transferor's balance sheet, and declines in the value of the security would reduce a company's overall net worth.

In a repo-to-maturity, the transactions are accounted for by the transferees of sales of securities, cash is increased, the security is removed from the balance sheet, and a gain or loss is recognized. A forward repurchase commitment, a derivative, is also recognized in the financial statements. Since the transferor maintains the credit risk associated with the securities it transferred, any reduction in the value of the security after the inception of the agreement is accounted for as a liability, which reduces the company's overall net worth.

Finally, whether the transaction is a repo or a repo-to-maturity, companies are required under GAAP to make extensive disclosures about assets that have been transferred, including both quantitative and qualitative information about the transferor's continuing involvement, the risk that the transferor continues to be exposed to, including credit and liquidity risk, the amount to be recognized, and gains or losses on transferred assets.

Thank you again. And I would be pleased to answer any questions about the standards.

[The prepared statement of Ms. Cosper can be found on page 61 of the appendix.]

Chairman NEUGEBAUER. Thank you very much.

I now recognize Mr. Capuano for 5 minutes.

Mr. CAPUANO. Thank you, Mr. Chairman. I appreciate the opportunity.

Again, thank you all for coming today. And I actually find this panel a little more technical, and hopefully more enlightening. We will find out.

I guess I want to start out by making clear what I think our role is, or where I am at the moment, based on the hearings we had and research I have done. If there was criminal activity at MF Global, I just don't think that is Congress' role to investigate criminal activity. Expose it, but then let the people who do a better job at it, do it. And if that is the case, so be it. But of course at the moment, I am not aware that anybody knows that or doesn't know that.

But so far, there have been two issues, and I think this panel actually relates to both; two issues that have really come to my attention that raise serious questions: the so-called segregated accounts; and some of the FASB rules.

Again, I want to distinguish the FASB rules from the way they—if they might have been used improperly. That would be an inappropriate use of it. But the rules, even if they were applied properly, still raise questions to me.

I guess I would like to start with the FASB rules. To me, it is mostly a statement 140. But reading your statement, there are other ways to refer to it, 860 and whatever the number is. It is basically the rule that says a repo is booked as a sale. And that has been reported in the media, whether it is appropriate or not.

It is appropriate to the layman, not necessarily to the technician. But that effectively takes it off the books. And it makes it look—it makes the company look like it is healthier than it really is, in any normal sense of the word, because in my definition, even reading the FASB rules, it is not a sale. They still have control over it. They are still getting it back. And I understand that is a reasonable difference of opinion.

But I wanted to make sure that—or not make sure. First of all, I wanted to ask Ms. Cosper, is FASB reviewing the current standards? Not necessarily as it relates to MF Global. I understand that is not your function. That is PCAOB's and others' function. But at least having—now knowing where we are, being here today, knowing that this rule has had something to do with the concerns here, and knowing it is subject to debate as to how it should be interpreted. I need to know whether FASB is reviewing whether this rule is an appropriate rule moving forward, in order to provide the true transparency and the consistent application of whatever rule you come up with. Because thus far, I think this rule is applied inconsistently. Not necessarily intentionally, but just because it is a difficult rule with lots of subsets.

So I guess I wanted to hear from you as to whether FASB is reviewing the current rules as you have them. Again, not even giving away what you may or may not do. But at least I need to know whether you are reviewing them with a thought of possibly addressing them at some point.

Ms. COSPER. Thank you. FASB strives to continue to improve our accounting standards. And once we became aware that there were concerns with respect to repo-to-maturities and repurchase agreements in general, we actually undertook an effort to understand what concerns were in the marketplace.

We have performed an extensive amount of outreach to practitioners, to users, to understand what the concerns may be. That outreach did not identify that there were application issues associated with the rule or perhaps diversity in practice. However, users have advised us that they have concerns because of the market practices that have changed since the rule was originally put into place.

That is, originally, repo-to-maturities, the securities that were generally transferred, were high-quality treasuries. And it has come to our attention that companies are now using riskier securities. So, taking that information, we discussed that with the Board. The Board has added a project to its agenda to revisit those rules and to understand whether there are changes that need to be made, and/or enhanced disclosures that need to be made.

Mr. CAPUANO. In the normal course of events, when you individually—I know it is not the first rule you have made. I know it is an ongoing process. Just that is what we do with laws you are doing with accounting rules. In the normal course of events, what would you expect? I will not hold you to it. Just give me a ballpark

idea how long you think it might take for FASB to conclude its review of this and decide whether to amend it or not to amend it. How long do you think that might take?

Ms. COSPER. We expect to start discussing the changes that we make next month. And we expect to issue a standard by the end of the year.

Mr. CAPUANO. By the end of the year? Okay. Thank you. I appreciate it.

Ms. Genova, just out of curiosity, if I had some money that I was holding with you, would you let Chairman Neugebauer pick up the phone to you and say, hey, I want to use Mike's money for a day or two and I will pay it back tomorrow. Would you let him do that? I know he is a nice guy and I trust him. But would you let him do that?

Ms. GENOVA. I am not sure what the context is, but it doesn't sound like I would.

Mr. CAPUANO. Good. I guess I feel better that you wouldn't, because I am not aware that any financial institution in the world would let that happen in any legal capacity. Yet, we have commingled funds. It is kind of funny. It is a classic.

I actually think they ought to be in politics, whoever came up with this term. They are commingled funds, yet they are called "segregated accounts." It is the opposite of segregated. It is commingled. And under that responsibility, from everything that I read, how could you possibly know whose money is whose in a commingled account?

Ms. GENOVA. The obligation to keep a minimum of client money in the account belongs to the FCM. So, it is the FCM that has the obligation to figure out what money is theirs and what money belongs to clients.

Mr. CAPUANO. Just for clarity, the FCM in this case would be—

Ms. GENOVA. It would be MF Global.

Mr. CAPUANO. That is what I thought. So, you would—there is no way in the world you would know what they had in an account of $100 or $100 million or a billion, how much money is customer money and how much money is not customer money. Is that correct?

Ms. GENOVA. That is correct. We would not have the information.

Mr. CAPUANO. So, you kind of have to trust the other guys?

Ms. GENOVA. We know that they have a legal obligation to comply with the rules and that they are regulated entities.

Mr. CAPUANO. Okay.

Mr. Roth, I will tell you that I read your statement. I actually like some of the things you are proposing. I want to congratulate you for it.

I guess I would first ask, because you are trying to address this very issue, I am going to go a little further in a minute, but at least for my first question: Are the other SROs following your lead on this issue, reviewing this issue and maybe making some proposed changes to how this gets done?

Mr. ROTH. The four recommendations I outlined are supported by all of the SROs that were part of that SRO committee, as well as other exchanges that we spoke to that weren't on the committee, as well as our FCM advisory committee that we spoke to, as well

as our public directors on our board. They have all been supportive of those four changes.

Can I just go back for one second? I don't mean to use up your time—

Mr. CAPUANO. You can try. As long as the chairman is indulgent.

Mr. ROTH. I just wanted to point out that excess segregated funds are a very important thing for the protection of customers. There are multiple customers with money in those accounts. If one customer incurs substantial trading losses, that excess segregated fund is a way of making good that customer's shortfall to protect all the other customers.

Mr. CAPUANO. Yes, I guess at some point, somebody is going to have to explain to me how using my money protects my money. Today is not the day. And I guess my last question, and I am way over my time, so my last question, and I think I know the answer, but I am going to ask it anyway, is why don't you just say stop commingling funds? If you want to invest—if any of the companies want to invest their own money, good luck. Why do they need to use my money?

Mr. ROTH. The reason we allow FCMs to have their own funds in the segregated account is for precisely the reason I already described, which is to say to protect other customers. In the event of one customer incurring a substantial trading loss and creating a shortfall in that account, the customer—

Mr. CAPUANO. How does it protect me if some other customer loses their money and, to me, somebody else uses my money to cover their losses? I didn't—it wasn't my game.

Mr. ROTH. I—

Mr. CAPUANO. It is my money. I didn't play that game, and yet, you are taking my money to protect some other customer—

Mr. ROTH. No, sir.

Mr. CAPUANO. —who lost their money, because they took a gamble.

Mr. ROTH. No, sir. If I could, can I try to explain it?

Mr. CAPUANO. You can try.

Mr. ROTH. If there is an FCM and it has two customers and each customer has $100 in the account so that the seg required is $200. Customer number one loses not only all of his money, he goes into a debit position so that there is only—he has incurred—he has a $50 trading loss. He is in the hole $50. That account, which had $200, now has $50. And to protect that customer who didn't have that loss, that is why the firm has its own money in there.

Mr. CAPUANO. But you didn't protect me. I didn't have the loss. You protected the guy—

Mr. ROTH. No.

Mr. CAPUANO. I guess I am way over time. We are going to have to go through this another day, Mr. Roth. I have yet to understand how me not gambling and protecting Randy's gambling losses somehow helps me.

And I am willing to be educated. I am looking forward to education, but I have to tell you, it makes no sense to anybody else I know, except—and, by the way, Ms. Genova, is there anyplace else where people can pick up the phone and use other money at JPMorgan? Is this the only one, or is there someplace else?

Ms. GENOVA. I am not aware of any other circumstance.

Mr. CAPUANO. Okay, and Mr. Roth, this is not the place. I am way over—

Mr. ROTH. I would just like to visit with you sometime, if that would be possible.

Mr. CAPUANO. I would like to. Thank you.

Chairman NEUGEBAUER. I would just say that one of the things, as you know, or part of the goal of this committee, is once we have completed our investigation and our oversight, we are going to publish a report that will be approved by the committee.

And one of the things that we hope to accomplish from that is once we ascertain exactly where the pitfalls are, we want to work with everybody to come up with what are some reasonable solutions.

If there are some holes in the current system that we need to fill and, obviously, the MF Global thing points out that there are ways to do that, whether one of the issues I think we have to always make sure we address is if people—if there is malfeasance there, you can pass all the rules and laws that you want to do and that is not going to keep malfeasance from happening. So we look forward to having that discussion.

And I now yield to the gentleman from New Mexico, Mr. Pearce, for 5 minutes.

Mr. PEARCE. Thank you, Mr. Chairman.

And, just for the record, I have not seen Mr. Neugebauer gambling away his life savings, and I so appreciate Mr. Capuano's generosity, but I did want to keep the good name of our chairman clear.

So, Mr. Roth, you hear what Mr. Capuano is saying. Should there be a statement that warns Mr. Capuano that his money could be used to cover other people's losses? And we could—should that—

Mr. ROTH. I think—

Mr. PEARCE. That wasn't in your suggestion.

Mr. ROTH. There is fellow customer risk of loss; it is one of the things that they talk about in the segregated funds regimen. And that is a situation in which one customer incurs huge trading losses, the firm's own capital is not sufficient to make good those trading losses, that can result in a shortfall in which non-defaulting customers suffer a loss.

Mr. PEARCE. And all customers know that?

Mr. ROTH. That has nothing to do with MF Global, as far as I know.

Mr. PEARCE. All customers know that?

Mr. ROTH. And I think there are disclosures about that. But I think whether we need to—I think it is certainly an issue that we can look at to see whether those disclosures can be sharpened and made more clear.

Mr. PEARCE. Yes, if those disclosures are something like the app disclosures; you have to read the thing and say, I agree.

Mr. ROTH. No, it is not a click thing.

Mr. PEARCE. Yes, so.

Mr. ROTH. But and I think that is an area that is certainly ripe for study.

Mr. PEARCE. Yes, it ought to be in blinking lights, because there are people who lost $1.6 billion. Did MF—

Mr. ROTH. Excuse me, I am sorry. That sort of fellow customer loss, risk of loss that I talked about, as far as I know, had nothing to do with MF Global.

Mr. PEARCE. Did MF Global break any laws, in your opinion?

Mr. ROTH. I don't know the facts of this investigation. I know that there is a shortfall in customer funds and that shouldn't happen.

Mr. PEARCE. No, it shouldn't happen. They shouldn't be able to take that. Do you know of any other of the trading firms that are dipping into the segregated accounts to make things whole?

Mr. ROTH. No. We monitor our firms on a daily basis. We have done special visits to these, the firms for the DSRO back in December, confirmed all the balances to outside sources. I am not aware of any other firm that has a shortfall in segregated accounts.

Mr. PEARCE. Were you all monitoring MF Global?

Mr. ROTH. I beg your pardon?

Mr. PEARCE. Were you monitoring MF Global?

Mr. ROTH. No, we were not the designated self-regulatory organization for MF Global. Chicago Mercantile Exchange—

Mr. PEARCE. Who are the other self-registered organizations that you would not be monitoring?

Mr. ROTH. There are around 75, 80—

Mr. PEARCE. Right, don't list them here then. I thought there was just one or two.

Mr. ROTH. —that are holding customer funds to trade futures. We are the designated self-regulatory organization for about 26 of them. The other ones, for the most part, are the CME is the DSRO.

Mr. PEARCE. Okay.

Ms. Cosper, on your FASB rules. So, now I have the money. I get Mr. Capuano's money and I buy some security that he has asked me to buy. Is that basically the initial transaction?

Ms. COSPER. Basically—

Mr. PEARCE. Just, yes, I am trying to simplify it down where people like me can understand it.

Ms. COSPER. Basically, Congressman Capuano would have a security, which he would transfer—

Mr. PEARCE. Yes, we would give him a piece of paper saying we bought this for you and have your promise—

Ms. COSPER. He would transfer it to you—

Mr. PEARCE. Yes.

Ms. COSPER. For cash.

Mr. PEARCE. Okay. And so then the repo account—

Ms. COSPER. And at the same time he has entered into a agreement to repurchase—

Mr. PEARCE. So the repo account takes that same security and sets it over here and borrows money back against it, right?

Ms. COSPER. That is correct.

Mr. PEARCE. And then we buy another security for someone else or ourselves. So now then—

Ms. COSPER. No, you enter into the—Mr. Capuano—

Mr. PEARCE. You have done something with the money that you got, right? You don't just sit it in the bank. They want—

Ms. COSPER. They would do something with the cash, presumably—

Mr. PEARCE. They want it to turn, right?

Ms. COSPER. But at the same time, you enter into a forward purchase commitment and that is recognized—

Mr. PEARCE. Yes, there are all sorts of legalities at the bottom of the line. At the bottom of the day, I take money that he gives me and I buy a security and then I trade that security to someone else to get cash, right?

And I still have the control over it, but I get cash, right? I bring that cash back and those—MF Global wasn't sitting that money in the bank. They weren't keeping it in JPMorgan's bank, they were then doing something else with it. They were buying something else, right?

Ms. COSPER. I can't comment as to what they would have done with the cash.

Mr. PEARCE. It is possible in a repo account to buy something else, right?

Ms. COSPER. They can use the cash however they would like to use the cash.

Mr. PEARCE. Yes, okay. My question is, is there a limit? You said that is all kosher from accounting standards, right?

Ms. COSPER. In a repo-to-maturity transaction.

Mr. PEARCE. Yes, so it is all kosher. Is there a limit to the number of times we can—so we get this security and then we trade it over here and we get money back and we trade it, so we can have 50 or 60 RPAs.

Is there a limit at where the accounting board says well, that is pretty confusing and maybe somebody has some exposure here and it is all based on that one deal. Do you all ever—

Ms. COSPER. That is—

Mr. PEARCE. Is there a limit to the number of RPAs?

Ms. COSPER. That is a regulatory matter, so we wouldn't be able to comment on if there was a limit.

Mr. PEARCE. You, as accountants, don't think that investors would really have an opinion about that?

Ms. COSPER. However, the company that initially transfers the security is fully culpable for the credit risk associated with that security, so as the value of that security declines, they recognize the liability and it hits their net worth. It reduces their net worth.

Mr. PEARCE. I know, but I am back to the number of RPAs that can be stacked on that initial transaction and I just think that investors, from an accounting standpoint, I don't know much about accounting and I don't know much about anything really.

We grew pigs growing up, but this kind of it just seems like that would be a kind of a significant thing for investors to know that their money is being—

Ms. COSPER. I think—

Mr. PEARCE. RPA'd back and forth and back and forth until there is a house of cards stacked up with not much underneath it.

Ms. COSPER. There is no doubt that GAAP requires that the company that transfers the security continues to make disclosures about the involvement and the risk associated with that—

Mr. PEARCE. When you start your meeting—

Ms. COSPER. That is required under GAAP.

Mr. PEARCE. Yes, I know my time is over, Mr. Chairman.

But when you start your meetings, you ought to probably be talking about these things, because people like us sitting up here you see, most of us are not really knowledgeable about MF Global. All we know is that $1.6 billion worth of money disappeared and we have a panel full of people and none of them can remember anything and they don't know who did that transaction. Nobody internally had to tell anybody else anything.

And we are the ones who get to answer the questions when we go back to the House. You guys are the sheriffs, so please mention that, at some point, you might want to consider the ethical legality questions.

Thanks.

Mr. Chairman, you have been very tolerant.

Chairman NEUGEBAUER. I thank the gentleman from New Mexico and I would just let the gentleman from New Mexico know that if he would like to know more on how you do that, you can call Mr. Corzine. I think he can share some information on that.

I now yield to my good friend from Texas, Mr. Canseco, for 5 minutes.

Mr. CANSECO. Thank you, Mr. Chairman, thank you.

Ms. Genova, why did JPMorgan Chase request assurances from MF Global that the firm was not improperly moving money out of customer accounts?

Ms. GENOVA. As I previously mentioned, it is the obligation of the FCM to know what funds in the account are their own and what are the customers' funds. And, therefore—and we wouldn't have the information to be able to tell.

So normally, we don't ask questions for every account transfer. That would just be untenable in a normal banking relationship. But, in this case, we did take the unusual step of asking questions and that was for two reasons.

First, it has been my experience that when firms have had issues with clients—with compliance with client segregation rules, it is often due to innocent operational errors. And those operational errors tend to occur under times of stress when there is a lot of trading and a lot of things going on in a company.

So given the situation in MF Global, I thought that was just something that—it gave me some pause.

The second was that the funds were being—we knew that the funds were going to ultimately be used to pay an overdraft in an account with JPMorgan. So therefore, if there was an error, JPMorgan would be the one benefiting from that error. And we did not want to benefit from an error. So we thought it was prudent to seek assurances.

Mr. CANSECO. And is that why the first letter was written so broadly?

Ms. GENOVA. The first letter was written broadly, because it was sort of put together, "Oh, let's just get assurances." And we hadn't really thought it through completely as to what did we really need.

Mr. CANSECO. And then the subsequent letters sort of satisfied their needs and their desires; is that correct?

Ms. GENOVA. Yes, that is true. We revised the letter to reflect what we really wanted to know.

Mr. CANSECO. And did they ultimately sign it and send it to you?

Ms. GENOVA. No, they didn't. I personally had conversations with both Ms. Ferber and her deputy, Mr. Klejna, who gave me oral assurances that they knew the rules, they were in compliance with the rules, and that—and when we finally revised the letter to only refer to the two transfers that we really had some concerns about, that in fact the letter would be signed.

Mr. CANSECO. One more question. On October 29th, Mr. Corzine told regulators that JPMorgan was one of two possible buyers of MF Global. Is that true?

Ms. GENOVA. I know that there was some discussion within JPMorgan about evaluating whether pieces of the MF Global business might be attractive to us. And after an evaluation, we decided that it really wasn't a good business fit.

Mr. CANSECO. Thank you, Ms. Genova.

Mr. Roth, Congress passed the Dodd-Frank bill using the logic that more rules and regulations are an adequate substitute for enforcing existing laws.

Right now, the CFTC is writing new rules at a furious pace. But in the case of MF Global, they failed to enforce the most basic of rules that monitor commodities accounts. In your opinion, how do the new rules and regulations written by the CFTC benefit producers in rural areas that in many cases rely on small, local banks for credit?

Mr. ROTH. I believe the expression is "above my pay grade."

Mr. CANSECO. Can you venture an answer nonetheless?

Mr. ROTH. I can tell you that I have been at NFA for about 29 years. So I have been in the regulatory process for futures for a long time. And I know that whenever bad things happen, there is a tendency to write new rules. That is sometimes very helpful. I think the rules that we are proposing here are very helpful rules.

But ultimately, it comes down to a matter of enforcement. I don't care what set of rules you have, ultimately, at the end of the day, it is about enforcement. And I think that is true of the rules in the futures regulation area, and I am sure it is going to be true in the swaps area as well.

Mr. CANSECO. Thank you. Should the CFTC be focusing its efforts on writing new rules, or do you feel they first need to do a better job enforcing them? And I guess your answer is "yes."

Mr. ROTH. I believe that the way the statute is set up, is that the CFTC is an oversight agency for NFA. NFA is not an oversight agency for the CFTC.

Mr. CANSECO. Thank you for your candor.

And I yield back the balance of my time, if there is any.

Chairman NEUGEBAUER. I thank the gentleman.

I just have a couple of questions.

Ms. Genova, this $200 million, $175 million transaction has gotten a lot of scrutiny with Mr. Corzine.

I think what gave it some of that scrutiny is that it was precipitated by the fact that Mr. Zubrow, I guess, from JPMorgan, actually called Mr. Corzine directly and said, "You are overdrawn. You need to take care of that."

Would that be a normal call that Mr. Zubrow would call the CEO of the company, or would you have called the treasurer? What was significant about Mr. Zubrow calling Mr. Corzine and telling him he was overdrawn?

Ms. GENOVA. I think in the context, this would be in the context of the fact that the company had just been downgraded to junk. Mr. Zubrow, who is the chief risk officer for the entire firm, would have concerns about this company. It would be his normal practice, if there were issues such as a large overdraft in an account, for him to call the most senior person in the company that he knew.

So, this would be something that would be actually an ordinary step for a company that was in some distress.

Chairman NEUGEBAUER. And was it about this time that you dispatched your team to go over and have a presence at—when—just refresh my memory. When did you all dispatch your team to go over to MF Global?

Ms. GENOVA. We went to MF Global on Friday, October 28th. And it was to help them see if we could do things to help them raise some liquidity.

Chairman NEUGEBAUER. That was on which day, now?

Ms. GENOVA. Friday, October 28th.

Chairman NEUGEBAUER. Okay. So is that the same day that they covered the overdraft?

Ms. GENOVA. That was the same day that they covered the overdraft, yes.

Chairman NEUGEBAUER. I think one of the things you said is that a debit alert was placed on this company. So you are looking at the deposits, the out-goes, the in-goes, kind of making sure that everything is appropriate. So someone was approving those transfers in JPMorgan, then, if you are on debit alert?

Ms. GENOVA. I would just like to clarify what "debit alert" really means.

Chairman NEUGEBAUER. Okay.

Ms. GENOVA. "Debit alert" means that, because of concerns about the company's financial condition, we will not transfer funds out of the account unless there are actually funds in the account. So in the normal course of business, to facilitate client transactions, we would transfer funds out of the accounts that aren't really there, and in a sense, creating—

Chairman NEUGEBAUER. —an overdraft.

Ms. GENOVA. —an overdraft. So basically, the day of the debit alert, means no overdrafts. But it does not mean that we approve each transaction. And if there is money in the account, and the client asks us to move the money, we just execute the client's instructions.

Chairman NEUGEBAUER. So you kind of put them on a COD. You had to have the cash in the account.

Ms. GENOVA. Yes.

Chairman NEUGEBAUER. Okay. Thank you.

Mr. Roth, I used a little analogy—I don't know if you were in the room or not—about how the customer funds went missing, that they were—the bottle was full, and the water below this belonged to the customer. The water below that, we poured it into that glass.

Mr. ROTH. Right.

Chairman NEUGEBAUER. And that is the way customer funds go missing, except for the fact, and I think you brought that point up, is that if somebody, some of the money, some of the people in the account, had big losses.

Mr. ROTH. Right.

Chairman NEUGEBAUER. Do you have any reason to believe that there were significant customer losses that precipitated the fact that the farmers' and ranchers' bottle is empty now?

Mr. ROTH. Mr. Chairman, my knowledge is based on what I have read in the press. What I have read in the press, I don't have any reason to believe that that issue was involved in this case.

Chairman NEUGEBAUER. So the way the money went missing is people took money out that shouldn't have been taken out?

Mr. ROTH. As far as I can make out from the press reports, that is exactly right.

Chairman NEUGEBAUER. Okay. I want to thank this panel. I want to thank the previous panel. I want to particularly thank the members and the ranking member. This is an important hearing. And it is important not only to the people who lost money in MF Global, but it is extremely important, I think, to the marketplace moving forward.

And Mr. Roth would probably agree with me. We will need to make sure that people have the confidence that when they do business with these firms, that their money—the only risk they are taking is their own risk, and they are not taking the firm's risk as well.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for Members to submit written questions to these witnesses and to place their responses in the record.

And with that, we are adjourned.

[Whereupon, at 5:57 p.m., the hearing was adjourned.]

A P P E N D I X

March 28, 2012

Opening Statement
Chairman Randy Neugebauer
Oversight and Investigations Subcommittee
"The Collapse of MF Global Part 3"
March 28, 2012

Thank you all for attending this important hearing on the collapse of MF Global, the eighth largest bankruptcy in our nation's history. This is the third in a series of hearings analyzing the failure of the firm. Through our ongoing investigation we have begun to understand the regulatory and corporate failures that led to the destruction of a 228-year-old company. But more importantly, we are starting to get concrete answers on how $1.6 billion of customer funds could have gone missing.

At our first hearing, we learned that the various federal government agencies charged with regulating MF Global failed to coordinate and share vital information in the months leading up to the collapse of the firm. This was despite the Dodd-Frank Act's promise to "facilitate information sharing and coordination" among regulators. Our second hearing examined whether and to what extent the risk controls, policies, and procedures that had been in place at MF Global were short-circuited by senior management, most notably by MF Global CEO Jon Corzine.

Today's hearing will examine the events that took place during the final week of MF Global's operations before the firm filed for bankruptcy on October 31, 2011. Through this hearing we are hoping to learn how and why there was a deficiency in customer funds, which MF Global's FCM business was required to keep "segregated". As we are all acutely aware, mandatory segregation of customer funds is the cornerstone of the futures business; therefore it is completely unacceptable to have a shortfall - let alone one as high as $1.6 billion. We are hoping to get more concrete answers from our panel today on how this could have happened.

As we examine all aspects of MF Global's collapse we cannot forget the human side of the aftermath. The customers of MF Global were farmers, ranchers, retirees and everyday investors. All of them were comforted by the fact that property rightfully belonging to them remained safe. This hearing will hopefully give them some level of comfort, and will demonstrate to them—and the American people—that we will not tolerate similar calamities and that we work tirelessly to restore confidence into the commodities markets.

I want to stress that this is not a trial; it is simply an oversight hearing that will help inform the eventual policy debate surrounding the collapse of MF Global. This is the type of investigatory work this Committee should have done following the Financial Crisis, instead of rushing to pass the Dodd-Frank Act.

Testimony of

Susan M. Cosper, Technical Director
Financial Accounting Standards Board

before the

U.S. House of Representatives Financial Services Subcommittee
On Oversight and Investigations

The Collapse of MF Global: Part 3

March 28, 2012

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Introduction

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

My name is Susan Cosper and I am the Technical Director of the Financial Accounting Standards Board (FASB or Board). As Technical Director, I have responsibility for overseeing the staff work associated with the projects on the Board's technical agenda. In addition, I am a Certified Public Accountant in the states of Pennsylvania, New York, and New Jersey. I would like to thank you for this opportunity to participate in today's important hearing.

I understand that the Subcommittee would like me to explain the current accounting and reporting standards relating to repurchase agreements and similar arrangements as well as how and why they were developed. I will be pleased to do so and also will explain some of the recent changes to those standards and discuss active projects related to this topic. But first I would like to give a brief overview of the FASB and its parent organization, the Financial Accounting Foundation (FAF) and the manner in which accounting standards are developed.

The FASB

The FASB is an independent, private-sector organization that operates under the oversight of the FAF and the SEC. For nearly 40 years, the FASB has established standards of financial accounting and reporting for nongovernmental entities, including both businesses (public and private) and not-for-profit organizations. Those standards—U.S. generally accepted accounting principles (GAAP)—are recognized as authoritative by the U.S. Securities and Exchange Commission (SEC or Commission) for public companies and by the American Institute of Certified Public Accountants (AICPA) for other nongovernmental entities.

U.S. GAAP is essential to the efficient functioning of the U.S. economy because investors, creditors, donors, and other users of financial reports rely heavily on credible, transparent, comparable, and unbiased financial information. In today's dynamic financial markets, the need for integrity, transparency, and objectivity in financial reporting is increasingly critical to ensure the strength of U.S. capital markets and provide investors with accurate and timely information.

In 2002, Congress enacted the Sarbanes-Oxley Act, which included provisions protecting the integrity of the FASB's accounting standard-setting process. The legislation provided the FASB with an independent, stable source of funding. The legislation established an ongoing source of funding for the FASB from annual accounting support fees collected from issuers of securities, as those issuers are defined in the Sarbanes-Oxley Act.

It is important to note that although the FASB has the responsibility to set accounting standards, it does not have authority to enforce them. Officers and directors of a company are responsible for preparing financial reports in accordance with accounting standards. Auditors provide an opinion about whether those officers and directors appropriately applied accounting standards. The Public Company Accounting Oversight Board (PCAOB) is charged with ensuring that auditors of public companies have performed an audit in accordance with U.S. GAAP, which includes an auditor's analysis of whether a public company has complied with appropriate accounting standards. The SEC has the ultimate authority to determine whether public companies have complied with accounting standards.

The Mission of the FASB

The FASB's mission is to establish and improve standards of financial accounting and reporting that foster financial reporting by nongovernmental entities that provides decision-useful information to investors and other users of financial reports. That mission is accomplished through a comprehensive and independent process that encourages broad participation, objectively considers all stakeholders' views, and is subject to oversight by the FAF's Board of Trustees.

We recognize the critical role that reliable financial reporting plays in supporting the efficient functioning of the capital markets: robust financial reporting increases investors' confidence, which in turn leads to better capital allocation decisions and economic growth. Today, as the U.S. economy continues to recover from the financial crisis and recession, the FASB remains committed to ensuring that our nation's financial accounting and reporting standards provide investors with the information they need to confidently invest in the U.S. markets.

To accomplish its mission, the FASB acts to:

1. Improve the usefulness of financial reporting by focusing on the primary characteristics of relevance and reliability and on the qualities of comparability and consistency.
2. Keep standards current to reflect changes in methods of doing business and changes in the economic environment.
3. Consider promptly any significant areas of deficiency in financial reporting that might be addressed through the standard-setting process.
4. Improve the common understanding of the nature and purpose of information contained in financial reports.

As it works to develop accounting standards for financial reporting, the FASB is committed to following an open, orderly process that considers the interests of the many who rely on financial information. Because we understand that the actions of the FASB affect so many stakeholders, we are steadfastly committed to ensuring that the decision-making process is independent, fair, and objective.

The Standard-Setting Process

An independent standard-setting process is paramount to producing high-quality accounting standards because it relies on the collective judgment of experts who are informed by the input of all interested parties through a deliberate process. The FASB sets accounting standards through processes that are thorough and open, accord due process to all interested parties, and allow for extensive input from all stakeholders. Such extensive due process is required by our Rules of Procedure, set by the Board within the parameters of the FAF's bylaws. Our process is similar to the Administrative Procedure Act process used by federal agencies for rulemakings but provides far more opportunities for interaction with all interested parties. In fact, in recent years, we have significantly expanded our ability to engage with stakeholders in a variety of ways.

The FASB's extensive due process involves public Board meetings, public roundtables, field visits or field tests, liaison meetings and presentations to interested parties, and the exposure of our proposed standards for public comment. The FASB videocasts its Board meetings and education sessions on its website to make it easier for our stakeholders to observe our decision-

making process as well as the process that precedes our decisions. The FASB also creates podcasts and webcasts to provide short, targeted summaries of our proposals and new standards so that stakeholders can quickly assess whether they have an interest and want to weigh in. We also have been proactively reaching out to meet with stakeholders, including a wide range of investors and reporting entities, to discuss our proposals to assess whether the proposals will lead to better information and also to assess the related costs. These proactive, interactive meetings allow the FASB and its staff to ask questions to better understand why a person holds a particular view, which can accelerate the identification of issues and possible solutions in a proposed standard as well as implementation issues with existing standards. Those meetings help us to assess whether U.S. GAAP standards are providing useful information and also to assess the related costs.

In short, the FASB actively seeks input from all of its stakeholders on proposals and processes and we are listening to them. Wide consultation provides the opportunity for all stakeholders to be heard and considered, the identification of unintended consequences, and, ultimately, broad acceptance of the standards that are adopted. The Board's wide consultation also helps it to assess whether the benefits to users of improved information from proposed changes outweigh the costs of the changes to preparers and others.

The FASB also meets regularly with the staff of the SEC and the PCAOB. Additionally, because banking regulators have a keen interest in U.S. GAAP financial statements as a starting point in assessing the safety and soundness of financial institutions, we meet with them on a quarterly basis and otherwise, as appropriate. We also understand Congress's great interest and regularly brief members and their staffs on accounting developments.

The FASB conducts outreach on a frequent and regular basis with the FASB's various advisory groups. The primary role of advisory group members is to share their views and experience with the Board on matters related to practice and implementation of new standards, projects on the Board's agenda, possible new agenda items, and strategic and other matters.

In addition to the FASB's various advisory groups, the Emerging Issues Task Force (EITF) assists the FASB in improving financial reporting through the timely identification, discussion, and resolution of financial accounting issues relating to U.S. GAAP. The EITF also was

designed to promulgate implementation guidance for accounting standards to reduce diversity in accounting practice on a timely basis. The EITF assists the FASB in addressing implementation, application, or other emerging issues that can be analyzed within existing U.S. GAAP. Task Force members are drawn from a cross section of the FASB's stakeholders, including auditors, preparers, and users of financial statements. The chief accountant or the deputy chief accountant of the SEC attends Task Force meetings regularly as an observer with the privilege of the floor. The membership of the EITF is designed to include persons who are in a position to project emerging issues before they become widespread and before divergent practices become entrenched.

Oversight of FASB

The FASB's accountability derives from oversight at two levels. First, the Board is overseen by the independent Board of Trustees of the FAF. Organized in 1972, the FAF is an independent, private-sector, not-for-profit organization. The FAF exercises its authority by having responsibility for oversight, administration, and finances of the FASB and its sister organization the Governmental Accounting Standards Board (GASB). The FAF's responsibilities are to:

1. Select the members of the FASB, the GASB, and their respective Advisory Councils.
2. Oversee the FASB's and the GASB's Advisory Councils (including their administration and finances).
3. Oversee the effectiveness of the FASB's and the GASB's standard-setting processes and holding the Boards accountable for those processes.
4. Protect the independence and integrity of the standard-setting process.
5. Educate stakeholders about those standards.

Second, the FASB also is subject to oversight by the SEC with respect to standard setting for public companies. The SEC has the statutory authority to establish financial accounting and reporting standards for publicly held entities. At the time of FASB's formation in 1973, the SEC formally recognized the FASB's pronouncements that establish and amend accounting principles and standards as "authoritative" in the absence of any contrary determination by the

Commission. In 2003, the SEC issued a Policy Statement that affirms the FASB' status as a designated, private-sector standard setter.

Additional information about the FASB and the FAF can be found in the 2010 Annual Report of the FAF, which is available on the FAF website (www.accountingfoundation.org).

Overview of Repurchase Agreements

In a typical repurchase agreement, an entity (the transferor) transfers securities to a counterparty (the transferee) in exchange for cash with a simultaneous agreement for the counterparty to return the same or equivalent securities for a fixed price at a future date. The price paid by the transferor to reacquire the securities comprises the original sale price plus a pre-determined interest rate known as the "repo rate," which is akin to a lending rate for a secured borrowing.

For entities engaged in trading activities, such as securities dealers, banks, and hedge funds, repurchase agreements are used to finance purchases of securities, obtain access to inexpensive funding, and cover short positions in securities. Government securities dealers, banks, and other market participants commonly use repurchase agreements to obtain or invest in short-term funds. For the transferee, a repurchase agreement is an opportunity to invest cash secured by collateral.

Many repurchase agreements are short term—often overnight—or have indefinite terms that allow either party to terminate the arrangement on short notice. Repurchase agreements have maturities that can be customized, as compared to other short-term financings such as commercial paper, certificates of deposit, or U. S. Treasury bills. However, repurchase agreements can also have longer terms, sometimes until the maturity of the transferred asset (i.e., repo-to-maturity transactions).

The general motivation for most repurchase agreements is financing related (i.e., the desire to borrow or lend cash). In these types of repurchase agreements, the securities that are required to be repurchased typically do not need to be identical to the securities transferred, but they must be similar within a predetermined set of criteria. However, repurchase agreements can also be used to borrow particular securities (e.g., to cover short positions).

In repurchase agreements and similar arrangements, the transferor and the transferee share the rights associated with the transferred securities. The rights of each party are established by the terms of the legal agreements governing the arrangements. Typical repurchase agreements have a number of common features. In a typical repurchase agreement, the transferee does not retain the cash inflows from the underlying securities or the gains or losses from fluctuations in the market prices of those securities. Rather, it must remit to the transferor all of the income earned on those securities. Most repurchase agreements are structured to give the transferee legal title to the securities for the life of the transaction. In most arrangements, the transferee may sell or repledge the securities during the term of the arrangement. Repurchase agreements that have been used to fulfill short-term financing needs of the transferor most often involve the transfer of U.S. Treasury securities, but they may also involve other types of securities that are easily exchanged in liquid markets. That liquidity enables the transferee to sell or repledge on short notice the securities with the expectation of obtaining similar securities if the transferor exercises its right to repurchase or redeem them early.

If the transferor defaults (that is, does not return the cash that it owes), the transferee typically is entitled to require the transferor to buy the securities immediately. If that does not occur, the transferee often is permitted to sell the securities it holds as collateral and apply the proceeds to what is owed, and the transferor is liable for any deficiency. If the transferee defaults (that is, fails to return the securities received), the transferor typically is entitled to demand the securities from the transferee. If that does not occur, the transferor typically is not required to return the cash it received at the inception of the transaction, and the transferee is liable for any deficiency.

Other arrangements, such as securities lending transactions and dollar-roll repurchase agreements are similar to repurchase agreements in their mechanics because they involve the temporary transfer and return of securities. However, there are some differences in the terms and structure of these arrangements. For example, in a securities lending transaction, the securities borrower initiates the transaction because it is in need of specific securities, whereas in a repurchase agreement, the party transferring the securities typically initiates the transaction because it is in need of financing.

Current Accounting Guidance for Repurchase Agreements and Similar Transactions

Current accounting guidance and current transaction structures result in many repurchase agreements being accounted for as secured borrowings with only certain types of transactions accounted for as sale transactions. Those repurchase agreements that are recognized as a sale are repurchase agreements involving the return of a security that is different from the security originally transferred and repurchase-to-maturity transactions.

FASB Accounting Standards Codification® Topic 860, Transfers and Servicing, currently prescribes when an entity may or may not recognize a sale upon the transfer of financial assets. Specifically, transfers of financial assets are accounted for as a "sale" of financial assets only if *all* of the following conditions are met:

1. The transferred assets have been isolated from the transferor—even in bankruptcy.
2. The transferee has the right to pledge or exchange the transferred assets.
3. The transferor does not maintain effective control through an agreement that entitles and obligates the transferor to repurchase or redeem them before their maturity.

If *any* of the conditions listed above are *not* met, the transaction is accounted for as a "secured borrowing" with a pledge of collateral.

For typical repurchase agreements and similar transactions, the criteria in items (1) and (2) depend on the facts and circumstances but usually are satisfied. But even if they are met, in most repurchase agreements the third condition for a "sale" (item (1) above) is *not* met because the transferor maintains effective control over the transferred financial assets.

The current guidance in Topic 860 provides additional instruction to evaluate item (1) for repurchase agreements and similar transactions. Specifically, the accounting guidance explains that an agreement that entitles and obligates the transferor to repurchase or redeem transferred assets from the transferee maintains effective control over the assets, and the transfer is therefore accounted for as a secured borrowing if *all* of the following conditions are met:

1. The assets to be repurchased or redeemed are the same or substantially the same as those transferred.

2. The agreement is to repurchase or redeem them before maturity at a fixed or determinable price.

3. The agreement is entered into contemporaneously with, or in contemplation of, the transfer.

In evaluating item (1) above, the transferor must have both the contractual right and the contractual obligation to reacquire securities that are identical to or substantially the same as those simultaneously sold. Transfers that include only the right to reacquire (at the option of the transferor or upon certain conditions) or only the obligation to reacquire (at the option of the transferee or upon certain conditions) generally do not maintain the transferor's control, because the option might not be exercised or the conditions might not occur. Similarly, expectations of reacquiring the same securities without any contractual commitments provide no control over the transferred securities.

Applying the criterion in item (2) above, effective control also is not maintained when the repurchase price for the transferred financial asset is not explicitly stated or determinable based on the terms of the contract. For example, an arrangement to repurchase the transferred financial asset at fair value to be determined at some future date would not meet the criterion because the purchase price is neither fixed nor determinable.

However, most repurchase agreements and similar transactions are accounted for as secured borrowings because of the transferor's concurrent right and obligation to repurchase or redeem the transferred securities at a fixed price *before* their maturities, which indicates that effective control has been maintained by the transferor. The accounting guidance is based on the concept that effective control is maintained for most repurchase agreements because they represent a temporary transfer of only some elements of control over the transferred financial assets. That is, the contractual obligation and right to repurchase a financial asset before its maturity effectively bind the transferred financial asset back to the transferor.

Nevertheless, repurchase agreements that extend to the maturity of the transferred financial assets and transactions in which the asset to be repurchased is not substantially the same as that originally transferred are common examples of transactions that could be accounted for as the sale of a security, with a separate agreement to repurchase the security. The accounting guidance distinguishes between (1) an agreement to repurchase a security *before* maturity, in which the outstanding security is indeed reacquired by the transferor in exchange for a cash payment equal to the agreed-upon repurchase price and (2) a repurchase agreement *to* maturity, in which the settlement is a net payment for only the difference between the proceeds received by the transferee at maturity from the issuer of the security and the agreed-upon repurchase price. Thus, control of the transferred financial asset under a repo-to-maturity agreement is considered to have been effectively surrendered because the transferor does not regain possession of the security and only makes a net payment that is reflected as a forward purchase commitment (liability) on the transferor's balance sheet before that payment was made.

In a transfer of securities that is accounted for as a secured borrowing, the transferor recognizes the cash as proceeds of the transaction, together with a liability for the obligation to return the cash to the transferee. The transferee pays the cash and records a receivable from the transferor.

If the transferor defaults under the terms of the contract and is no longer entitled to redeem the transferred securities, it would derecognize the transferred securities. The transferee would recognize the transferred securities as its asset or, if it has already sold the collateral, derecognize its obligation to return the collateral.

If the criteria for *sale* accounting are met, during the term of the arrangement the transactions are accounted for by the transferor as a sale of the securities and a forward repurchase commitment. The forward repurchase commitments typically are considered derivatives under Topic 815, Derivatives and Hedging. Derivatives are accounted for at fair value on the balance sheet, with changes in fair value recognized concurrently in income. Thus, if the value of the security transferred in a repo-to-maturity declines, the forward repurchase agreement would be reported on the balance sheet of the transferor as a liability representing the difference between the value of the security and the agreed-upon repurchase price. In contrast, if recognized as a secured borrowing, a transferor would have shown a liability for the entire repurchase price from inception throughout the

life of the arrangement (rather than the current shortfall and disclosure). The security would remain on the balance sheet, and any impairments on the security would be recognized in earnings over time. At maturity, the remaining value on the bond would be used to pay off the liability and the entity would make up the difference, if any.

History of Accounting Guidance for Repurchase Agreements and Similar Transactions

The accounting guidance for transfers of financial assets was originally established in 1996 by FASB Statement No. 125, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*. The specific guidance for repurchase agreements and similar transactions included within the overall guidance for transfers of financial assets was primarily based on contract features and prevailing practices at that time associated with repurchase agreements and similar transactions.

After the issuance of Statement 125, the accounting and disclosure guidance for transfers of financial assets were amended and clarified with the subsequent issuance of various pronouncements, including among others:

1. FASB Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities,* was issued in September 2000 and effective for transfers and servicing of financial assets and extinguishments of liabilities occurring after March 31, 2001, and for disclosures relating to securitization transactions and collateral for fiscal years after December 15, 2000. This Statement required a debtor to (a) reclassify financial assets pledged as collateral and report those assets in its statement of financial position separately from other assets not so encumbered if the secured party has the right by contract or custom to sell or repledge the collateral and (b) disclose assets pledged as collateral that have not been reclassified and separately reported in the statement of financial position. This Statement also required a secured party to disclose information about collateral that it accepted and permitted by contract or custom to sell or repledge. The required disclosure included the fair value at the end of the period of that collateral, and of the portion of that collateral that it has sold or repledged, and information about the sources and uses of that collateral.

2. FASB Staff Position (FSP) FAS 140-3, *Accounting for Transfers of Financial Assets and Repurchase Financing Transactions,* was issued in February 2008 and effective for fiscal years beginning after November 15, 2008. This FSP provided guidance on accounting for a transfer of a financial asset and a contemporaneous repurchase agreement and whether such transactions must be evaluated as a linked transaction or evaluated separately. The guidance clarified that all involvements of a transferor with the transferred financial asset must be included in the analysis of whether a transferor has surrendered control over a transferred financial asset.

3. FASB Staff Position FAS 140-4 and FIN 46R-8, *Disclosures by Public Entities (Enterprises) about Transfers of Financial Assets and Interests in Variable Interest Entities,* was issued in December 2008 and effective for the first reporting period ending after December 15, 2008. Before the issuance of FASB Statement No. 166, *Accounting for Transfers of Financial Assets,* this FSP required public entities to provide additional disclosures about transfers of financial assets and their involvement with variable interest entities. These enhanced disclosures were deemed necessary primarily because financial statement users indicated that greater transparency was needed to understand the extent of a transferor's continuing involvement with transferred financial assets and an entity's involvement with a variable interest entity.

4. Statement 166 was issued in June 2009 and effective for first annual reporting period that beginning after November 15, 2009, and for interim periods within that first annual reporting period. This Statement modified criteria for sale accounting for transfers of financial assets and eliminated exceptions that permitted sale accounting for certain securitizations. While the amendments did not focus on accounting for repurchase agreements and similar transactions, enhanced disclosures were required about the risks that a transferor continued to be exposed to because of its continuing involvement for all financial asset transfers. Specifically, it required disclosures about how the transfer of financial assets affects a transferor's financial position, financial performance, and cash flows when a transferor has continuing involvement with the transferred financial assets.

Recent FASB Activities

The various amendments outlined in the section above, which were codified into Topic 860, largely did not affect the application of the control criteria for repurchase agreements and similar transactions. During the global economic crisis, capital market participants questioned the necessity and usefulness of one of the relevant considerations initially included with the issuance of Statement 125 in determining whether an entity has maintained effective control over transferred financial assets subject to repurchase agreements. The SEC also highlighted concerns about the practical application of one area of the guidance for assessing effective control. Specifically, these questions and concerns related to the criterion requiring the transferor to have the ability to repurchase or redeem the financial assets on substantially the agreed-upon terms, even in the event of default by the transferee, as well as certain related implementation guidance. After reconsidering that guidance, the FASB determined that the criterion pertaining to the maintenance of collateral should not be a determining factor in assessing effective control. This amendment, which was issued with Accounting Standards Update No. 2011-03, *Transfers and Servicing (Topic 860): Reconsideration of Effective Control for Repurchase Agreements,* was effective for interim or annual periods beginning on or after December 15, 2011.

During the course of that project, some parties also raised some issues related to repurchase agreements that were considered beyond the scope of the project, which was intentionally narrow to resolve a specific practice issue in an expeditious manner. Some highlighted the need to improve existing disclosure requirements for these types of transactions. Others raised the potential need for reconsideration of the specific criteria for whether the securities are considered "substantially the same" as the securities sold, which is another criterion to be considered in assessing whether repurchase agreements are sales and secured borrowings.

As discussed above, current accounting guidance and current transaction structures result in most repurchase agreements being accounted for as secured borrowing transactions with only certain types of transactions being accounted for as sale transactions. Those are repurchase agreements involving the return of a security that is different from the security originally transferred and repo-to-maturity transactions.

Concerns about the accounting for repo-to-maturity transactions had not been raised previously, even when the FASB was actively reconsidering the accounting for repurchase agreements, as

enumerated above. However, in late 2011, concerns were raised about the accounting for repo-to-maturity transactions, and in January 2012, the staff of the FASB had discussions with the SEC's Office of the Chief Accountant to evaluate those concerns. The FASB staff commenced outreach activities with various stakeholders to better understand views and practices related to repo-to-maturity agreements. Our outreach indicates that users broadly view repurchase agreements involving the same or similar securities as financing transactions whether or not the securities are held to maturity. While the conclusion under the accounting literature makes a distinction between repurchases *before* maturity and *at* maturity, users make no such distinction and cite the transferor's retention of both the credit risk of the transferred financial assets and other important benefits of those assets in both types of transactions. Our outreach also confirmed that users of financial statements broadly believe that disclosures for repurchase agreements should be improved, especially the effect of such transactions on the liquidity risk profile of the transferor.

In March 2012, the FASB considered these issues at a public Board meeting and unanimously agreed that a project should be added to the FASB's agenda to reconsider the accounting and disclosure guidance for repurchase agreements and similar transactions. In adding the project to the agenda, the Chairman cited the need to revisit the accounting guidance to address application issues and changes in the marketplace, and to ensure that investors obtain useful information about these transactions. For example, while repurchase agreements historically have involved mostly U.S. Treasury and agency securities, the range of debt instruments involved has broadened to include other types of debt securities, which may be less creditworthy and consequently affect how these transactions operate and how investors consider the risks associated with them.

Consistent with the FASB's due process, moving forward with this project will involve a series of public education and decision-making meetings and the exposure of a proposed standard for public comment. Following exposure, stakeholders will be consulted to discuss the proposals and help us to determine whether they will lead to better information and to assess cost-benefit concerns. This process supports our commitment to ensure that a final standard is well understood by preparers, auditors, and users of financial statements and results in improved financial information for investors. Subject to the Board's deliberations, we currently anticipate that any resulting amendments from this project could be issued in 2012.

On a related topic, as part of the FASB's project on Accounting for Financial Instruments, we are proposing new disclosures with the goal of providing users of financial statements more decision-useful information about entity-level exposures to certain risks, including liquidity risk.

The liquidity risk disclosures being developed are intended to provide quantitative information about an entity's liquidity risk that the reporting entity will encounter difficulty meeting its financial obligations. For a financial institution, the Board's tentative decisions reached to date in this project would require tabular disclosure of the carrying amounts of classes of financial assets and financial liabilities segregated by their expected maturities. These tentative decisions also would require a financial institution to provide tabular disclosure of its available liquid funds to meet obligations

Conclusion

Thank you for the opportunity to provide a brief overview of the current accounting and reporting standards relating to repurchase agreements and similar arrangements, including some of the recent changes to those standards and a discussion of active projects related to this topic. I would be pleased to answer any questions.

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.

STATEMENT OF DIANE GENOVA
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES
OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE

MARCH 28, 2012

Chairman Neugebauer, Ranking Member Capuano, and Members of the Subcommittee, good afternoon. My name is Diane Genova. I am the Deputy General Counsel for the investment bank of JPMorgan Chase & Co. I am pleased to appear this afternoon on behalf of J.P. Morgan in order to describe for you certain of the interactions J.P. Morgan had with MF Global before MF Global filed for bankruptcy protection on October 31, 2011. I appreciate the opportunity to appear before the Subcommittee.

As I will describe in more detail, J.P. Morgan professionals worked very hard throughout the week of October 24 to accomplish two main goals: first, we took what we believed were appropriate and prudent steps, as part of maintaining safe and sound banking operations, to ensure that we did not wind up in a position where we had extended credit to MF Global without proper collateral and security protections; and, second, our professionals simultaneously worked very hard that week to provide first-rate operational clearing and settlement support and services to MF Global. With those goals in mind, J.P. Morgan also sought to collect as much information as we could from MF Global about its liquidity situation under what were very difficult, rapidly changing circumstances. We were always mindful that despite our best efforts, there was a lot going on inside MF Global during that week that we were not seeing and could not see.

BACKGROUND

To understand what we were trying to accomplish that week, it may be helpful to describe briefly the banking services that J.P. Morgan (along with numerous other financial institutions)

provided to MF Global. These are fairly standard services that clearing banks typically provide to support the day-to-day broker-dealer and futures commission merchant ("FCM") operations of firms like MF Global.

First, MF Global maintained a large number of cash demand deposit accounts (much like a retail checking account) both at J.P. Morgan and at several other banks to support its operations in the United States, Europe and Asia. Four of the accounts MF Global maintained with J.P. Morgan in the United States were designated as customer segregated accounts, and these accounts generally contained funds belonging to customers as well as funds belonging to MF Global itself, as permitted by the relevant CFTC regulations.

Second, MF Global used both J.P. Morgan and Bank of New York Mellon ("BONY") for clearing services. When MF Global cleared U.S. Treasury securities, it did so through BONY. It cleared Federal Government Agency securities (*e.g.*, Federal Home Loan Bank securities) through J.P. Morgan.

Third, well before the week of October 24, MF Global had negotiated for and put in place two committed revolving credit facilities in which J.P. Morgan was the administrative agent for two large groups of other banks. The first of these was a $1.2 billion committed line of credit that MF Global was entitled to draw upon without having to post any collateral — in other words, it was unsecured. And, as I noted, J.P. Morgan was the administrative agent for a total of 22 other banks, with Citibank and Bank of America serving as the syndication agents for the bank group. The other revolving credit facility was a $300 million committed line that MF Global was entitled to draw upon, but only if it first properly posted certain eligible securities (*e.g.*, U.S. Treasuries and Federal Government Agency bonds) as collateral for the loan. J.P. Morgan served as administrative agent for a syndicate of nine other banks, including Harris Bank, Citibank and Bank of America.

With regard to the $1.2 billion unsecured facility, MF Global had drawn down, prior to the week of October 24, a total of $367 million from that facility, and then, during the week of October 24, MF Global drew down an additional $805 million, for a total outstanding loan balance of approximately $1.17 billion. J.P. Morgan had promptly funded these draw requests by MF Global to the full extent of its individual commitment (which was $73.5 million); during that week, however, certain other financial institutions who were members of the bank group either delayed their funding or did not provide funding at all to MF Global.

Finally, long before the week of October 24, MF Global had entered into securities lending and repurchase arrangements with J.P. Morgan, the largest of which involved MF Global borrowing U.S. Treasuries from J.P. Morgan's securities lending clients in exchange for posting U.S. Government Agency securities as collateral. Shortly before MF Global filed for bankruptcy, it had been borrowing approximately $5.3 billion worth of U.S. Treasuries every night through this securities lending arrangement.

WEEK OF OCTOBER 24

With that brief background, let me now turn back to the events of the week of October 24, 2011. Early that week, it became clear that MF Global was in some degree of distress and there had been a number of negative public announcements about the company — for example, on Monday, October 24, Moody's downgraded MF Global's credit rating to the lowest investment-grade level, and on Tuesday, October 25, MF Global announced a large quarterly loss and suffered a sharp drop in its stock price thereafter. Despite those developments, J.P. Morgan continued to provide to MF Global the standard array of banking and financial services described earlier.

On Thursday evening, October 27, Moody's publicly announced that it was downgrading MF Global by two notches to below investment grade. As a result, late on Thursday evening, J.P. Morgan professionals began the process of putting all MF Global accounts on what is called "debit alert" and advising personnel at MF Global that we were doing so. A debit alert is a standard step that banks take when a customer is in financial distress. It mandates that no transfers of funds requested by the customer will be executed unless the bank determines that there are "good funds" present in the account to be debited that are adequate to support the requested transfer. As part of this debit alert process, J.P. Morgan also suspended all of MF Global's uncommitted intra-day credit lines.

That same evening, we agreed with MF Global to send a J.P. Morgan team to MF Global's New York City offices on Friday, October 28, to assist MF Global with its ongoing efforts to unwind its securities lending arrangements, including the unwinding of numerous repurchase transactions and the sale and purchase of large amounts of securities held by MF Global. We understood that these activities were being done by MF Global to generate as much liquidity as possible, in order to meet requests for more margin from various clearing houses, requests from its customers to withdraw funds (in circumstances where such funds were being held by MF Global in permissible securities investments), and requests for more collateral from MF Global counterparties. By unwinding its securities lending arrangements, MF Global was able to regain access to the securities it had posted as collateral, and thus was able to sell those securities and thereby generate additional liquidity and deleverage its balance sheet.

Separately, on the morning of Friday, October 28, as a result of the heightened level of attention to MF Global transfers and balances dictated by the debit alert, J.P. Morgan determined that there were overdrafts in certain of the foreign-exchange clearing accounts maintained by MF Global's U.K.-based affiliates. We promptly advised the Chairman and CEO of MF Global Holdings Ltd., Jon

Corzine, and others at MF Global of these overdrafts and were assured that any overdraft would be covered. It was especially important to both MF Global and J.P. Morgan that the overdrafts be covered because J.P. Morgan had agreed to facilitate a broad auction to multiple market participants of approximately $4.9 billion in government agency and corporate bonds as a way to assist MF Global in its ongoing effort to generate liquidity. J.P. Morgan had offered, as part of its ongoing support for MF Global, to take the unusual step of providing same-day liquidity as to any such sales in which J.P. Morgan acted as agent on MF Global's behalf with respect to securities actually custodied at J.P. Morgan. This measure would provide MF Global with liquidity on the fastest possible basis, and certainly far faster than the typical one to two business days for regular way settlement of such securities trades. However, as MF Global understood, J.P. Morgan was unwilling to take this unusual step if MF Global's overdrafts were not addressed. Thus, when this was raised with Mr. Corzine on Friday morning, he readily agreed that it was important for MF Global to cover the overdrafts, and he assured J.P. Morgan executives that MF Global had ample funds to cover the overdrafts and that they would be covered promptly.

J.P. Morgan management was able to confirm by about 11:00 AM on Friday, October 28, that MF Global had transferred sufficient funds to its U.K. affiliate to cover the London overdrafts. J.P. Morgan also noticed that MF Global had done so through a series of two transfers. The first was a transfer of $200 million from an MF Global account in the U.S. designated as a customer segregated account to an MF Global account in the U.S. designated for MF Global's own funds. The second was a transfer of $175 million from that MF Global account in the U.S. to another MF Global account in London also designated for MF Global's own funds. The customer segregated account from which MF Global had withdrawn $200 million had an opening balance on Friday of approximately $1.32 billion. After further internal review and discussion, J.P. Morgan determined that under the circumstances, including the financial stress facing MF Global and the fact that the transfers had been made to cover

overdrafts in MF Global accounts maintained at J.P. Morgan in the U.K., it would be prudent and appropriate to ask MF Global to confirm that these transfers had been made in compliance with the CFTC rules governing customer segregated accounts.

It is important to note that in seeking such assurances and as background to making this request, J.P. Morgan understood it is common industry practice for FCM firms such as MF Global to maintain substantial amounts of their own funds within their customer segregated accounts. This is typically done by FCM firms in order to serve as a cushion and ensure that adequate funds are always maintained in such accounts and to facilitate day-to-day operations. J.P. Morgan also understood that the relevant CFTC rule — CFTC Rule 1.23 — permits an FCM firm to add its own funds to customer segregated accounts to ensure that such accounts do not become "undersegregated." Rule 1.23 also expressly permits an FCM firm to "draw upon such segregated funds to its own order" and do so to the full extent of the FCM firm's "actual interest therein." Indeed, when the CFTC amended these rules in August 1997, it specifically explained the reasons for this common industry practice:

> [M]aintaining an adequate cushion of its own in segregation is a part of routine FCM funds management operations. FCM operational funding needs often dictate that any unneeded excess funds in segregation be moved so that they can be used in other aspects of the firm's operations. Therefore, prudent and efficient funds management typically requires an FCM to make frequent transfers of funds into and out of segregation.

Securities Representing Investment of Customer Funds Held in Segregated Accounts by Futures Commission Merchants, 62 Fed. Reg. 42398 (Aug. 7, 1997).

We also understood that FCM firms such as MF Global are required each day to calculate the amount of actual customer funds they are holding and the total amount of such funds on deposit in segregated accounts, and if they determine at any point they are undersegregated, they must

promptly notify their designated self-regulatory organization (*i.e.*, the CME) and the CFTC. J.P. Morgan and other depository institutions do not receive these FCM calculations or regulatory notifications.

Thus, around early to mid-afternoon on Friday, October 28, J.P. Morgan reached out to Mr. Corzine to explain J.P. Morgan's understanding of how the London overdrafts had been covered by a series of transfers originating with a withdrawal of funds from a customer segregated account, and to ask that MF Global confirm in writing that the funds it had transferred represented its own funds and thus that it was entitled to withdraw them pursuant to CFTC Rule 1.23. Mr. Corzine said he understood the request and would have someone within his organization review it. J.P. Morgan thereafter e-mailed a proposed draft letter to Mr. Corzine. That initial draft asked MF Global to confirm that all transfers made at any time from its customer segregated accounts to any of its own accounts represented MF Global's "actual interest in such funds according to CFTC Regulation 1.23." Knowing it had been a busy week for MF Global, we thought that our request would help to focus the attention of appropriately senior MF Global officials. In retrospect, events appear to have overtaken MF Global during the weekend before it filed for bankruptcy, and, as a result, the letter was not signed. Nevertheless, our request did result in our receiving multiple clear oral assurances from senior MF Global officials that MF Global was in compliance with its obligations under the CFTC rules.

Later on Friday, after not hearing back about the letter, we placed a call to the office of Laurie Ferber, the General Counsel of MF Global, but we wound up speaking with Ms. Ferber's deputy general counsel, Dennis Klejna. We understood Mr. Klejna to be a former Head of the Enforcement Division of the CFTC and someone who had a reputation in the FCM industry as an expert in the relevant CFTC rules and regulations. We explained to Mr. Klejna that we hoped to get the letter sent earlier that day signed and were calling to check on the status of the letter. In response, Mr. Klejna told us that the transfers made that day by MF Global out of its customer segregated account had been done in

compliance with the CFTC rules and represented excess funds belonging to MF Global. Mr. Klejna stated that his only concern about the letter was that our proposed draft appeared to him to be overly broad in that it referred to all transfers that had ever been made out of these accounts, which, as he pointed out, would have necessitated a time-consuming administrative burden to review all such transactions. He therefore asked that we narrow the letter to focus solely on the transfers executed on October 28. Mr. Klejna closed by saying that he needed to consult with Ms. Ferber about getting a narrowed form of the letter signed. A revised version of the letter — focusing only, as Mr. Klejna had suggested, on the transfers from October 28 — was e-mailed to Mr. Klejna around 6:30 PM that evening.

The next day, Saturday, October 29, we arranged to speak by telephone at around 2:30 PM with both Ms. Ferber and Mr. Klejna. Much as we had done the evening before, we began this call by saying that we were calling to check on the status of the (now revised) letter. Among other things, Ms. Ferber assured us in substance that MF Global understood the relevant CFTC rules, that MF Global knew how to properly maintain customer segregated accounts, that the transfers on Friday, October 28 that we had inquired about represented a withdrawal of MF Global's own funds held in a customer segregated account, and that we therefore did not need to be concerned. After some further discussion about how we could more specifically focus the draft letter on the series of transfers on the morning of Friday, October 28 that had initially triggered J.P. Morgan's request for assurances from MF Global, Ms. Ferber told us that she would arrange to have such a revised letter signed. Ms. Ferber was known by J.P. Morgan to have an outstanding reputation for expertise in the securities and FCM industry.

In accordance with this 2:30 PM telephone conversation on Saturday afternoon, my colleagues sent a further revised version of the letter to Mr. Klejna a little after 5:00 PM that day. As the Committee is already aware, we never received the executed letter back from MF Global. Neither I nor to the best of my knowledge anyone else from J.P. Morgan ever had any further communications with

anyone at MF Global about the letter. But we certainly were never told that any MF Global personnel were refusing to sign the letter or that MF Global would not provide us with a signed letter. As I noted earlier, we fully expected to receive a signed letter after we spoke with Ms. Ferber. When the letter did not arrive on Sunday, October 30, our belief was that, given all that was happening at MF Global that day, they simply had numerous pressing matters to attend to that prevented them from turning their attention back to our letter. We had no reason to doubt the clear oral assurances we had been given on Friday and Saturday.

CONCLUSION

J.P. Morgan sought to support the clearing and settlement operations of MF Global during a very challenging and difficult week, and to do so in a prudent manner so that J.P. Morgan did not inadvertently extend credit to MF Global without adequate and appropriate protections and MF Global could continue to serve its customers.

Thank you again for the opportunity to make this statement. I hope it has been helpful and I would be happy to answer any questions the Subcommittee may have.

TESTIMONY OF DANIEL J. ROTH
PRESIDENT AND CHIEF EXECUTIVE OFFICER
NATIONAL FUTURES ASSOCIATION

BEFORE THE OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE OF THE
COMMITTEE ON FINANCIAL SERVICES OF THE
U.S. HOUSE OF REPRESENTATIVES

March 28, 2012

My name is Daniel Roth and I am the President and Chief Executive Officer of National Futures Association. NFA is the industrywide, self-regulatory organization for the futures industry. Our 4,000 Member firms include futures commission merchants, commodity pool operators, commodity trading advisors and introducing brokers. The recent demise of MF Global has dealt a severe blow to the public's confidence in the financial integrity of our futures markets. This is much more than an academic argument. Thousands of customers have suffered and continue to suffer from a breakdown in the regulatory protections they have come to expect. Their frustration with the situation is completely understandable. Reestablishing the public's confidence is essential to our futures markets, which, in turn, are an essential part of our nation's economy.

All of us involved in the regulatory process have to work to restore that confidence and that effort must begin with identifying and implementing regulatory changes to try to prevent such insolvencies from occurring. At NFA we began that process by identifying a broad range of possible responses. Those possible responses fell into three categories: changes that would require coordination with other self-regulatory organizations, changes which we could accomplish by amending NFA rules and changes that would require action by either the CFTC or by Congress.

To deal with the first category of possible regulatory changes we formed a committee of futures industry self-regulatory organizations. The committee included representatives of NFA, the CME Group, the InterContinental Exchange, the Kansas City Board of Trade and the Minneapolis Grain Exchange. Over a period of three months, the committee held a number of intensive and thought provoking meetings. Two weeks ago, we announced our initial recommendations, which called for significant safeguards in the way that we monitor our members for compliance with duties regarding customer segregated funds. Those recommendations include:

- Requiring all Futures Commission Merchants ("FCMs") to file daily reports concerning their segregated and secured funds. This will provide SROs with an additional means of monitoring firm compliance with segregation and secure amount requirements and a risk management tool to track trends or fluctuations in the amount of customer funds firms are holding and the amount of excess segregated and secured funds maintained by the firms.

- Requiring all FCMs to file Segregation Investment Detail Reports reflecting how customer segregated and secured funds are invested and where those funds are held. These reports would be filed bimonthly and will enhance monitoring of how FCMs are investing customer segregated and secured funds.

- Performing more frequent periodic spot checks to monitor FCM compliance with segregation and secured requirements. FCMs are already audited each year by both their Designated Self-Regulatory Organization and their outside accountant. Supplementing those audits with periodic, surprise testing focused on segregation requirements will increase regulatory scrutiny in this most critical area.

- Requiring a principal of the FCM to approve any disbursements of customer segregated or secured funds not made for the benefit of customers and that exceed 25% of the firm's excess segregated or secured funds. The firm would also be required to provide immediate notice to its SROs.

Certain of these recommendations will be implemented within the next few weeks. Others will require rulemaking. We expect to present rule proposals implementing these changes at our next Board meeting in May. Any changes to NFA's rules would then be submitted to the CFTC for its approval. We would hope that all of these recommendations can be implemented by early summer. In the meantime, the SRO Committee will continue its work and consider other possible regulatory changes.

For those issues that can be addressed by changing NFA rules or by developing recommendations for either the CFTC or Congress, NFA appointed a Special Committee for the Protection of Customer Funds. This committee consists of the public directors on NFA's Board. We are blessed with public directors that combine a wide range of experiences and a deep expertise in financial markets. Our public directors include a former chairperson of the CFTC, two former presidents of the Chicago Federal Reserve Bank, a former congressman, several academics and a former chief economist for a futures exchange. The Special Committee's initial focus has been on making it easier for small customers to do meaningful due diligence on an FCM before opening an account. Customers should not have to wade through 40 pages of footnotes to financial statements to find material financial information about any FCM.

The Committee is attempting to identify the basic information that would be helpful to small customers, such as the FCM's capital requirement, its excess capital, the amount of customer segregated funds the firm holds, the amount of the firm's excess segregated funds, how much leverage the firm employs, how the firm invests customer segregated funds, whether the custodial bank that holds customer funds is an affiliate of the FCM and whether the firm trades as a principal in any non-hedged transactions. We anticipate that when the Special Committee finalizes its list of information that should be disclosed to customers, we will require firms to file that information with NFA and will then post it on our website to allow customers to make comparisons. We hope that the Special Committee's recommendations in this area will also be presented to our May Board meeting. The Special Committee will then take up a number of other issues, including possible changes that should be made to the bankruptcy code to deal with insolvencies by firms that are both FCMs and broker-dealers.

The initial recommendations of the SRO Committee and NFA's Special Committee mark a beginning, not an end, to the process of improving regulatory protections for customer funds. Until MF Global, the futures industry had an unblemished reputation for financial integrity. The process of restoring that reputation must balance the need for a prompt response with the need to avoid hasty decisions that could in the long term do more harm than good. I recognize that no system of regulation can in every instance prevent people intent on breaking the law from doing so, but we can make improvements and the initial recommendations I have outlined above are an important first step in that direction.

We look forward to working with the industry, the CFTC and with Congress to ensure that what emerges is a better regulatory model.

STATEMENT OF CHRISTINE SERWINSKI
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, thank you for the opportunity to testify today. My name is Christine Serwinski. I understand that the Subcommittee is investigating the events leading up to the bankruptcy of MF Global Holdings and its subsidiaries and that this hearing is focusing on the events from October 24, 2011, until the bankruptcy filing on October 31, 2011. Although I was away from the office during most of the last week before MF Global filed for bankruptcy, I hope that my testimony nonetheless will prove helpful to the Subcommittee.

At the time of the events in question, I was the Chief Financial Officer ("CFO") of MF Global Inc., which was the North American broker-dealer and Futures Commission Merchant ("FCM"). I graduated from Northern Illinois University in 1987 and began my career in financial services in 1988 as an auditor at the Chicago Board of Trade. I stayed in that position until 1992, when I joined ConAgra as an auditor. In July 1994, I began work in the regulatory department for a subsidiary of ConAgra, called Geldermann, which, among other things, operated an FCM. Man Financial acquired Geldermann in December 1994, and I became the General Accounting Manager in the combined entity. In 2000, I was promoted to Controller. In July 2007, Man Financial became MF Global following an IPO. In November 2008, I was promoted to CFO of MF Global Inc., which is a subsidiary of MF Global Holdings USA, whose ultimate parent is MF Global Holdings Ltd., the publicly traded company.

At the time of the events in question, I reported to the Global Head of Legal Entity Control, who was based in London. He reported to Henri Steenkamp, who was the Global CFO. Prior to a reorganization in March 2011, I reported to Mr. Steenkamp, whose title then was Chief Accounting Officer of MF Global Holdings Ltd.

In my position as CFO of MF Global Inc., I was responsible for the accounting team, and in that function the Canadian CFO and the North American Controller reported to me. The regulatory accounting group, operating under the Regulatory Capital Controller, also reported to me. In light of the Subcommittee's interest in the events of the week of October 24, it is important to note that Treasury, Treasury Operations, and Securities Operations did not report to me. Treasury reported to the Global Treasurer, Vinay Mahajan. Treasury Operations and Securities Operations reported to David Simons, who was in charge of Global Operations.

Well before the events of October, on June 27, 2011, after nearly twenty years at MF Global and its predecessor firms, I tendered my resignation. I had been working very hard for a very long time, and I decided I wanted to take a new direction in my professional life. In order to ensure a smooth transition, the Company asked me, and I

agreed, to stay on for another nine months, with the aim of accomplishing three goals: (1) I was to find and train my replacement; (2) I was to transition day-to-day operations to that replacement; and (3) I was then to work on special projects until my departure. We found a replacement, and he was scheduled to begin work on November 1, 2011.

I am aware that the Subcommittee is particularly interested in the events of the week prior to the October 31 bankruptcy. I will do my best to provide whatever information I can, but I apologize in advance if I am unable to add a great deal of detail. I was away on vacation for the majority of that week and did not return to the office until Sunday evening, October 30. I will do my best to tell you what I know about the events of that week.

On Monday, October 24, Moody's downgraded MF Global's credit rating. An earnings call had been scheduled for Thursday, October 27, but was moved up to Tuesday, October 25, to respond to the downgrade. Moody's downgrade was followed shortly thereafter by a second ratings agency downgrading the Firm to the same level as Moody's.

On Tuesday, October 25, I left Chicago for a previously planned vacation. I was scheduled to return to the office one week later, on Tuesday, November 1, to coincide with my replacement's first day on the job. Prior to my departure, I spoke to several members of my staff and drafted emails to co-workers to ensure all of the functions of my office would continue and be covered. I kept in contact with the office throughout the week, communicating with the Global Head of Product Control, the North American Controller, the Regulatory Capital Controller, the Assistant Treasurer, the Global Head of Legal Entity Control, and others. All these people knew how to -- and did -- reach me as necessary. Despite the negative news from the ratings agencies, I had every reason to believe that the firm was on solid ground prior to my departure and that all functions for which I was responsible would be handled professionally in my absence.

I had daily access to emails via my BlackBerry during my week off. I read emails when I could, which was sporadic, since my activities during the week kept me occupied for long periods of time. I also spoke to people at MF Global on the telephone from time to time throughout the week. All communications with MF Global employees indicated that things were very busy but that there was nothing so pressing as to necessitate cutting short my vacation. In fact, I was reassured that everything was under control, and at no time did anyone ever suggest that I should return to the office.

Indeed, on Tuesday evening, I was informed that the FCM had come through the day well. On Wednesday afternoon, I was told that everything was being handled in the usual course. I received similar communications on the morning of Thursday, October 27.

Nonetheless, late in the day on Thursday I decided to come back to Chicago a day early, on Sunday rather than Monday. I was not alarmed, but I believed it would be better to return early, given the level and unusual nature of activity at the firm. Among

other things, I had by then learned that there were serious efforts underway to sell all or a substantial portion of MF Global Inc.'s business. Earlier on Thursday, I also learned that the segregation report for Wednesday showed a substantial deficit in what was called the "firm invested in excess segregated and secured funds." This figure represented the amount that the firm contributed to the segregated and secured accounts. This amount was over and above all customer funds and served as a buffer to ensure customer funds were safe. Though the firm could remain in full regulatory compliance even if the "firm invested" amount went negative, I had stated clearly and repeatedly that the firm should maintain a positive "firm invested" balance every day in its segregated and secured report. To me, even though the regulations would allow it, I was not comfortable with the firm putting customer funds at risk even just overnight in that manner.

When I inquired as to the reason for Wednesday's "firm invested" deficit, I learned that the broker-dealer unit of the firm had borrowed money from the FCM on an intraday basis and had missed the wire deadline to pay it back. The inter-departmental lending on an intraday basis was not unusual, but the loan should have been paid back before Wednesday's close of business. I communicated with my office and was assured that the matter was under control and being addressed and that the funds would be returned on Thursday. Indeed, Friday's segregation report, reflecting figures for Thursday, showed that the "firm invested in excess segregated and secured" funds had returned to expected positive levels, which I believed at the time reflected the return of the borrowed funds, as promised.

On Saturday, I was told initially that the segregation and secured statement for Friday showed the firm to be under-segregated. However, Treasury assured my department that the apparent under-segregation reflected reconciliation errors and that the firm was not really under-segregated. As the day wore on, I was told that the segregation and secured statement was looking good and that Treasury was working on the reconciliations. On Sunday morning, as I headed to the airport to return to Chicago, I believed that matters at the firm, while hectic, were under control.

Just before boarding my flight on Sunday, I heard from our Global Head of Product Control that there was, indeed, a problem with the FCM segregated and secured funds. He told me that we were under-segregated by almost $1 billion. At the time, I did not believe this was possible. I thought that such a huge number could only be the result of an accounting error. When I landed in Chicago, I learned that, upon further review and analysis, the firm apparently had excess segregated and secured funds. I was relieved to hear that news but felt I needed to go into the office Sunday night anyway to assess the situation, assist in any possible sale of the company (for which I understood there were serious negotiations underway), and make sure we were ready for business on Monday morning. As it turned out, once I arrived at the office Sunday night, I did not leave again until Monday evening.

Upon arriving at the office, I spoke with the North American Controller and the Regulatory Controller. They told me that, in fact, there appeared to be a segregation

and secured deficit of $900 million. I dove into the accounting with my team, checking every number and verifying all of the various elements that go into the segregation and secured funds report. I was still operating under the belief that there must have been an accounting error because such a large deficit was simply inconceivable to me.

Early Monday morning, after hours of looking for this error, the Assistant Treasurer handed me a piece of paper that identified three categories of transactions that, according to her calculations, accounted for the shortfall in the FCM's segregated accounts. Upon seeing this information, I realized that the deficit in the segregated and secured funds was real and not an accounting error. We informed a representative of the Chicago Mercantile Exchange, our Designated Self Regulatory Organization, who was on site at the time, and my focus immediately shifted to identifying all available funds within MF Global that might be transferred into the segregated/secured environment as early as possible on Monday.

We worked relentlessly throughout the early morning hours and, indeed, throughout the day on October 31, to try to bring the segregated and secured accounts back to the appropriate levels. I even requested my colleagues to ask the Federal Reserve to open its wire facility early on Monday morning to begin transfers, but we were unsuccessful. Although we were able to move some funds into the FCM's segregated and secured accounts, a number of submitted transfers were not executed by the banks, and we were unable to move sufficient funds to make up for the shortfall.

I have seen reports suggesting that staff of the Securities and Exchange Commission ("SEC") may have told the Subcommittee's staff that they expressed concern to MF Global regarding the firm's calculation of excess funds in the broker-dealer customer reserve account and cautioned against transferring those funds. I did not hear, directly or indirectly, of any such communication from the SEC staff. I can assure the Subcommittee that if I had learned that any of our regulators had communicated a concern about proceeding with any of the transfers we were considering on the 31st, I would not have proceeded with an effort to transfer the funds in question. My sole goal was to try to find firm funds that properly could be transferred to the segregated and secured environment to meet the firm's obligations to customers.

During the morning of October 31, I learned that MF Global had filed for bankruptcy. I was told that we were under Securities Investor Protection Corporation ("SIPC") protection sometime during the day on Monday. Eventually, I was informed by SIPC that the Firm could no longer engage in any further financial transactions.

Shortly thereafter, the SIPC Trustee asked me to stay on at MF Global until February 15 to assist in the wind-down of the business, which I agreed to do.

Thank you. I look forward to addressing to the best of my knowledge and ability any questions the Subcommittee may have.

Statement of Henri J. Steenkamp
Chief Financial Officer of MF Global Holdings Limited
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:

Thank you for the opportunity to make this brief statement. My name is Henri Steenkamp and I am the Chief Financial Officer of MF Global Holdings Limited, a position I have held since April 2011. Let me say at the outset that I am deeply saddened, upset and frustrated that money belonging to MF Global Inc.'s customers has not been returned in full. I know, however, that my reactions cannot be compared to those of the people who are suffering with this issue. Along with certain other senior executives of MF Global Holdings Limited, I have remained at my post following the bankruptcy filing and I am working diligently with the Chapter 11 trustee to do what I can to maximize the value of the firm for all interested parties. That said, because of the SIPC trustee's rules and policies, I have unfortunately not been able to participate in the current efforts to return customer funds.

Description of My Role as CFO

While I am deeply distressed by the fact that customer monies have not yet been fully repaid, I unfortunately have limited knowledge of the specific movement of funds at the U.S. broker-dealer subsidiary, MF Global Inc., during the last two or three business days prior to the bankruptcy filing. This is in part because of my global role and in part because, during those days, I was taken up with other very serious matters.

As the global CFO, I had many different functions, but principal among them was the effort to (1) ensure that the holding company's consolidated financial accounts complied with all U.S. accounting and reporting requirements, and (2) work closely with our investors and the rating agencies.

As its name suggests, MF Global Holdings Limited – my employer – is a global holding company with approximately 50 domestic and foreign subsidiaries. Each of the regulated subsidiaries generally had its own or a regional chief executive officer, chief operating officer, chief financial officer and others obligated to independently discharge the customary duties of those offices according to its home jurisdiction's regulatory requirements. All of these positions were filled by highly experienced professionals, dealing directly with local regulators.

Direct involvement with operational matters such as bank accounts or fund transfers has never been part of my duties.

Segregated Customer Funds

It is, of course, important to understand the way in which segregation issues were handled at MF Global Inc., the subsidiary that acts as a futures commission merchant, in the ordinary course of business. (To avoid confusion, where necessary to specifically refer to MF Global Inc., I will call it "MFGI" in my statement). MFGI held all U.S. FCM customer funds required by law to be segregated, and all segregation calculations were performed by experienced MFGI personnel in Chicago overseen by MFGI finance professionals. To my understanding, MFGI's segregation of client funds had been reviewed repeatedly by the firm's outside auditors and regulators over a long period of time. As a general matter, I was not involved with the details of

segregated funds in the course of my duties as global CFO, nor with the complex segregation calculations performed by MFGI in Chicago and reported to regulators on a daily basis.

The week prior to the bankruptcy filing saw, among other things, multiple ratings agency downgrades in quick succession, extraordinary liquidity stresses and efforts to sell all or part of the firm. It was a time of constant pressure and little or no sleep, with a significant number of critical issues to resolve. As the CFO of the holding company, my attention was appropriately focused on crisis management and strategic issues relating to the sale of the company.

On Monday, October 24, 2011, Moodys announced that it was downgrading MF Global's credit rating by one notch, leaving the firm with the lowest possible investment grade rating. This was followed by further downgrades throughout the rest of the week, the speed and severity of which where unprecedented in my experience, placing extraordinary pressure on the firm's liquidity.

As the situation deteriorated, the sale of the futures commission merchant business and/or the entire firm was pursued. In between my dialogue with the rating agencies, I dedicated my time to the daunting task of facilitating the due diligence necessary for an acquisition or asset sale almost exclusively in the period commencing on the evening of October 27th and ending with the decision to file for bankruptcy on the morning of October 31st.

On Sunday (October 30th), when a deal for the acquisition of all or part of the company appeared to be close at hand, I first learned of a serious issue with MFGI's segregated fund calculations.

Unfortunately, as the Subcommittee is aware, the efforts to reconcile the segregation calculation were not successful and the deal fell through. I, along with others from MF Global, promptly notified our regulators about the segregation issues.

I understand that the Subcommittee, MFGI's customers and the public have many unanswered questions about customer funds. I share many of these questions and I am personally extremely frustrated and distressed that they remain outstanding and that client funds have not been repaid in full.

I would be pleased to answer the Subcommittee's questions. Thank you.

COMMODITY CUSTOMER COALITION
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March 27, 2012

The Honorable Randy Neugebauer
Chairman
United States House of Representatives
Subcommittee on Oversight and Investigations
Committee on Financial Services
1424 Longworth HOB
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to you to offer the thanks of a grateful global constituency of former MF Global customers. In addition, I hope to encourage you to persist and persevere in your efforts to restore customer property and market integrity. The Commodity Customer Coalition, a non-profit advocacy group formed in the wake of MF Global's demise, represents thousands of former MF Global customers. Our members and supporters recognize that without your efforts, and the efforts of your Subcommittee, our cause to return all property misappropriated by MF Global would be difficult to advance.

Evidence of criminal wrongdoing in the conduct of MF Global's business abounds, from securities fraud to simple larceny. Yet we are frequently reminded by anonymously sourced material in the national media that money can 'vaporize' and that no crime may have been committed at MF Global. Though such opinions fail to satisfy even a cursory application of scrutiny, it is only through the work of Congressional committees like yours that such notions will be put to rest.

If your Subcommittee brings to light that a criminal act was committed by an MF Global employee, not only will the guilty face justice, but additional recoveries of assets will be sped to customers. We believe that counterparties who were paid with MF Global's customer funds will invoke the safe harbor provision of the bankruptcy code to keep those funds. Normally the law does not afford the recipients of stolen property the means to keep it. If an actual fraud was committed--which it most assuredly was--then there is no safe harbor for these counterparties. A full recovery for MF Global's customers would only be a matter of time.

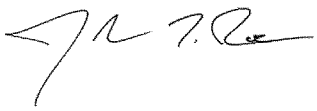
Additionally, your investigation shines a light in a dark corner of finance, illuminating and guiding the appropriate policy response which will mitigate the impact of future bankruptcies of like financial institutions. This will restore faith in America's commodity markets as the trusted global mechanism for risk management. As you are well aware, these markets are an integral gear in the American economic engine. Their proper functioning is a necessary component of our economic recovery, our future prosperity and the survival of our free market system.

In the coming days and weeks, you will hear from our members and supporters as they express their personal stories and show their gratitude for your hard work. They will provide you with the human side of the MF Global collapse, the collateral damage reaped from frozen collateral. These customers range from farmers and ranchers, to retirees, to

professional traders. All of them are bound by the indisputable fact that property rightfully belonging to them remains purloined, and it appears a vast and complicated effort is underway to keep it that way. Your committee can give these customers, obscured by the magnitude of this story, a platform from which they may be heard.

The Commodity Customer Coalition stands ready to aid you in your endeavor. Should you, your staff or the Subcommittee require any additional assistance, please contact us at your convenience. We remain at your service.

Regards,



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