

**INVESTIGATIVE HEARING ON
THE MF GLOBAL BANKRUPTCY**

HEARING
BEFORE THE
**COMMITTEE ON AGRICULTURE,
NUTRITION AND FORESTRY**
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS
FIRST SESSION

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DECEMBER 13, 2011
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INVESTIGATIVE HEARING ON THE MF GLOBAL BANKRUPTCY

Tuesday, December 13, 2011

UNITED STATES SENATE,
COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY,
Washington, DC

The Committee met, pursuant to notice, at 10:06 a.m., in room SH-216, Hart Senate Office Building, Hon. Debbie Stabenow, Chairwoman of the Committee, presiding.

Present: Senators Stabenow, Harkin, Conrad, Nelson, Brown, Klobuchar, Bennet, Gillibrand, Roberts, Lugar, Chambliss, Johanns, Boozman, Grassley, Thune, and Hoeven.

STATEMENT OF HON. DEBBIE STABENOW, U.S. SENATOR FROM THE STATE OF MICHIGAN, CHAIRWOMAN, COM- MITTEE ON AGRICULTURE, NUTRITION AND FORESTRY

Chairwoman STABENOW. Well, good morning. We welcome all those and thank all those that will be with us this morning for a very important hearing. The Senate Agriculture, Nutrition and Forestry Committee will now come to order.

Before this Committee today are just a few of the former customers of MF Global, which at the time of its bankruptcy had 38,000 customer accounts.

In the days preceding the collapse, it became apparent that MF Global would no longer survive as a company.

While companies often make bad decisions and fail, no one expected the violation of one of the foundational principles of the futures markets: the protection of customer money. On Monday, October 31, at 2:30 in the morning, MF Global revealed that an estimated \$900 million in customer money had gone missing—unaccounted for. MF Global filed for bankruptcy a few hours later.

Now we are here left with more questions than answers. The customers are here still waiting to get their money back. And the executives and the former CEO of MF Global are here to tell us what they know. And the regulators are here to tell us where they are in the process of getting that money back and what they should do in the future to better oversee the financial management of customer funds.

The Agriculture Committee oversees the futures and swaps markets in part because those markets are critically important for the successful functioning of America's agriculture economy. As I have said many times, nearly 16 million people have jobs because of agriculture in this country. And in this difficult economy, agriculture

has been one of the few bright spots. And, frankly, we want to keep it that way.

Situations like what happened at MF Global threaten that success. Our farmers and ranchers have lost trust in the system. They believed that there were safeguards in place to protect their money in exactly situations like this.

A fundamental principle of futures trading is that customer money must always be kept separate from the firm's money.

It is estimated that as much as \$1.2 billion in customer money is missing. I know that every member of this Committee, and certainly the customers who are here today, and those across Michigan and across the country, would like to know what happened to that money. It has now been a month a half since the firm collapsed, and customer money is still nowhere to be found.

This is not the Dark Ages. MF Global did not keep their books with feather quills and dusty ledgers. The rules about keeping customer money segregated are pretty straightforward. That it has been over a month and teams of lawyers and forensic accountants still cannot figure out what happened raises very troubling questions.

So I am very eager to hear from the executives, as well as the trustee, as well as the front-line regulators about what happened.

This hearing is about three things: getting the customers' money back, holding anyone engaged in wrongdoing accountable, and ensuring that proper customer protections are in place so that something like this does not happen again.

The customers here today, and the thousands of others across the country whose money is missing, deserve answers. And I hope we can get some of those answers today.

I would now like to turn to my colleague and friend, Senator Roberts, for his opening remarks.

STATEMENT OF HON. PAT ROBERTS, U.S. SENATOR FROM THE STATE OF KANSAS

Senator ROBERTS. Thank you, Madam Chairwoman, for calling this hearing on MF Global's bankruptcy and its effect on our Nation's economy.

As you have said, this Committee has jurisdiction over the futures markets and its regulator—the Commodities Futures Trading Commission. The futures markets provide businesses and investors—whether they are individuals, companies, farmers, ranchers, cooperatives, or others—the opportunity to manage risks.

In light of recent events, it is imperative that this Committee exercise its oversight responsibilities to understand what happened in the days leading up to MF Global's bankruptcy, who was involved in any actions that resulted in the company's downfall, and how to move forward.

First and foremost on my mind is how customer accounts will be made whole. Reports indicate anywhere between \$600 million and \$1.2 billion of customer funds are missing.

The fundamental rule in the futures markets business is to segregate—to keep apart—customer accounts and company accounts. Some believe this rule was broken in this case. If this is the case, that is what we are here to find out.

Among the witnesses today are officials from MF Global who can help answer the many questions that I and other members of the Committee have.

According to testimony given in previous hearings before this Committee and in the House, customer funds were accounted for on Wednesday October 26 and believed to be accounted for on Friday, October 28. Yet by Monday October 31, they were gone.

CME's press release of November 2 states, and I quote, "It now appears that the firm made subsequent transfers of customer segregated funds in a manner that may have been designed to avoid detection insofar as MF Global did not disclose or report such transfers to the CFTC or CME until early morning on Monday, October 31, 2011."

Funds do not simply disappear. Someone took action, whether legal or illegal, to move that money. And the effect of that decision is being felt across the countryside.

Now, the buck stops somewhere, and between the three witnesses from MF Global here today, I hope we can find out where those hundreds of millions of dollars landed.

Since MF Global's bankruptcy on October 31, we have heard from many investors, businesses, farmers, ranchers, and their bankers across the country that are caught up in this event.

Today we will hear firsthand from those hit hardest by MF Global's collapse. I truly appreciate Mr. C.J. Blew from Hutchison, Kansas, taking time, his valuable time, appearing today, as the other witnesses have done, to provide a description of the impacts on their business interests and their farming operations.

We will also hear from CFTC Senior Commissioner Jill Sommers who is leading the investigation and enforcement actions at the Commission since Chairman Gensler has allegedly removed himself from these matters. So thank you, Commissioner Sommers, for appearing here today.

I also thank Mr. Giddens, the bankruptcy trustee in this matter, for agreeing to be here. Customers have plenty of questions for you, as I do, about how money can be returned to those owed. I know you have worked very diligently to return funds to customers, and I appreciate your efforts.

The Chairman has said it. Producers must have faith in the safety and stability afforded by the futures market.

The need for faith and confidence in the ability to manage one's own risk is why we and this Committee will continue to push to get to the bottom of what happened.

Thank you, Madam Chairwoman. We have several witnesses today. I look forward to hearing from all of them.

Chairwoman STABENOW. Thank you, Senator Roberts, and thank you to all of our members that are here today, and we will ask you to submit opening comments for the record. We do have three panels with us today, and we want to move directly to our witnesses. And we thank all of you for being here today, for coming and joining us. We made a decision to ask you to speak first because you are the focus of why we are here. You are the focus of the financial markets and making sure they work well, and our number one focus is to make sure that you are made whole and have confidence in the markets moving forward. So we thank all of you for being

here. As you know, we welcome your written testimony and ask you to keep your oral testimony to 5 minutes today.

Our first panelist is an MF Global customer from Freeland, Michigan, Roger Hupfer. I welcome you today. Mr. Hupfer is the president and markets director of Freeland Bean & Grain, Incorporated. He also sits on the board of directors and trustees for the Michigan Bean Shippers Association. So we welcome you.

Next up we have Mr. Jeff Hainline, president of Advanced Trading, Incorporated, in Bloomington, Illinois. Prior to joining Advanced Training, Incorporated, in 1982, Mr. Hainline was a cross-country trader, a barge freight trader, and a merchandising manager for Behimer and Kissner. He is also a member of the National Grain and Feed Association's Risk Management Committee and the CFTC's Subcommittee on Convergence.

Next I would like to ask Senator Klobuchar to introduce our next witness from Minnesota.

Senator KLOBUCHAR. Well, thank you very much, Madam Chair. I am pleased to introduce Mr. Dean Tofteland from Luverne, Minnesota. Luverne is a town of 2,600 people, and he and his daughter came all this way because they care very much about this issue. His family grows corn, soybeans, and raises pigs on their farm. He currently has over \$200,000 in what was supposed to be a segregated MF Global account which he cannot access and which he may never fully recover.

He is not a speculator, Madam Chair. He, in fact, invested to manage risk, locking in prices ahead of the growing season so he was protected against price fluctuations that could eat into his profits. If he does not get access to his account soon, he is not sure what he is going to do for next year's crop, and he is just one example of hundreds of farmers that we have in our State right now that want to get their money back and want to get this resolved.

Thank you very much, Madam Chair.

Chairwoman STABENOW. Thank you.

Finally, along with Senator Roberts, I welcome Mr. C.J. Blew, who, along with his wife, Becky, operates a diversified crop and cow-calf operation in south central Kansas. Since 2005, he has served as the director for his local co-op, Mid Kansas Cooperative Association, located in Moundridge, Kansas. He currently serves as its chairman.

So, again, we welcome all of you, and I would ask at this point that you rise so we can administer an oath to you. If you would stand and raise your right hand. Do you swear that the testimony you are about to present is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HUPFER. I do.

Mr. HAINLINE. I do.

Mr. TOFTELAND. I do.

Mr. BLEW. I do.

Chairwoman STABENOW. Thank you very much.

Mr. Hupfer, your testimony, please.

STATEMENT OF ROGER HUPFER, PRESIDENT AND MARKETING MANAGER, FREELAND BEAN & GRAIN, INC., FREELAND, MICHIGAN

Mr. HUPFER. Good morning, Madam Chair, Ranking Member Roberts, and members of the Committee. My name is Roger Hupfer, and I am the president and marketing manager of Freeland Bean & Grain in Freeland, Michigan. I want to thank you for this opportunity to give you an overview of our company and how the MF Global bankruptcy has impacted our business.

Our company is a family-owned and -operated full-service agribusiness. We originated in 1983 and have provided almost 30 years of uninterrupted service to our local community. We operate two country elevator facilities, which accept corn, soybeans, and soft white and red wheat, and we also receive, process, and ship edible beans to various domestic packagers, canners, as well as interests in Mexico. We also provide feed, fertilizers, seeds, crop protection products, and custom application service for our customers. We are members of the National Grain & Feed Association, the South East Grain & Feed Association, and the Michigan Agribusiness Association. We are fortunate to have Jim Byrum representing our agribusiness interests in Michigan. He has been a great asset to our industry.

We take great pride in how we operate our business, and we work very diligently with our customers to help them achieve their marketing goals. Our customers place great confidence and trust in us when delivering their commodities to our facilities, and they expect us to provide and maintain competitive, perpetual marketing programs to assist them with their risk management.

It is this very confidence and trust that was shattered by the MF Global bankruptcy. The industry has always operated under the assumption that our funds were in a safe and secure place by being kept in segregated accounts. We were in total shock when we found out otherwise. Misuse of these funds for other purposes is not only unethical, but also criminal. Those responsible for oversight fell far short of fulfilling their responsibilities in this matter.

Our company has plans to expand and construct a new state-of-the-art grain receiving and storage facility with groundbreaking scheduled for 2012. This new facility will help us meet increased demand and give us the ability to load out grain unit trains. With this increased demand, how will we be able to effectively manage the increased volatility and price risk and place our hedges with confidence if the very integrity of exchange-based futures trading is in jeopardy? Also, how do we know if there are other clearing firms that might be in financial trouble by being involved in bad investments and poor management?

There are several livestock and dairy producers in Michigan that have a much greater amount of capital at risk than some of the commercial grain companies. I can personally give you an example of a customer of ours who has more capital at risk than we do. All he was attempting to do was to sell his cash grain and hedge by buying call options. He is not a speculator; he is just a prudent operator. If this situation is not resolved, I feel it will have an impact, a very negative impact, on rural communities across the country.

When I put together my testimony, I called three other elevator operators in Michigan and asked for their input. One of them made this comment. He said, "It is really sad when my risk management program needs risk management."

I can speak for our company and on behalf of the other agribusiness firms that have been impacted by this disaster that we expect to be made whole and have all of our funds returned to us in a timely manner so that the integrity of the exchange can be restored.

Again, I want to thank you for this opportunity to share my views with you today. I would be happy to respond to any questions.

[The prepared statement of Mr. Hupfer can be found on page 137 in the appendix.]

Chairwoman STABENOW. Thank you very much.
Mr. Hainline?

STATEMENT OF JEFF HAINLINE, PRESIDENT, ADVANCED TRADING, INC., BLOOMINGTON, ILLINOIS

Mr. HAINLINE. Thank you, Chairman. My name is Jeff Hainline, and I am the chairman of Advanced Trading. Advanced is a non-guaranteed introducing broker that did business with MF Global. Our customers are farmers, elevators, grain processors, meat producers, and owned about 3,000 accounts there. Advanced Trading's customers and its business, with large sums still unaccounted for, are suffering from confusion 6 weeks after the failure.

I suggest the Committee have most of its focus in this initial effort on the crucial issue that must be dealt with immediately. In the grain industry, 100 percent of each year's supply is produced within a narrow time frame and used throughout the year. As such, the business is overwhelmingly dominated, like few others, by inventory management and financing. Depending on market behavior, borrowings can amount to many times the net worth of the elevator company, but lenders make funds available at very competitive rates because the loan is well secured by verifiable presence of grain in the elevator and the financial soundness of the futures hedge.

The futures market is the essential central financial instrument upon which world grain commerce is entirely based, and any change in the lender's assessment of risk on what can be an extremely large and rapidly increasing loan balance would alter their financial relationships with grain businesses in a dramatic fashion.

Each firm's customer segregated capital is guaranteed by the capital of the clearing member. Thus far, no statement by the bankruptcy trustee that I have seen seems cognizant of the fact that segregated customer funds are guaranteed by the full capital of the clearing member. It is entirely clear to all that is a precondition of becoming a clearing member of the Chicago Mercantile Exchange and others. Absent the reality of that guarantee, the business cannot operate.

Both priority and rapid execution of the priority of customer segregated funds and bankruptcies of clearing members must occur instead of years of uncertainty that stretch in front of us. This principle absolutely must be clear for futures exchanges. Futures con-

tracts at the Mercantile Exchange and others are rightly regarded by lenders as financially sound precisely because and only because each clearing member guarantees its own capital as a first line to back the customer segregated funds, and the clearing corporation guarantees the trades between clearing members. Any ambiguity or hesitation as to exactly where those necessary guarantees stand will not only freeze the industry, it will certainly translate into a sizable multiplier effect in terms of lower prices to farmers and higher prices to consumers.

It is not overstating the case to project that if the priority of customer segregated funds in a bankruptcy is not firmly entrenched, it will need to be in the wake of MF Global after the effects of not doing so become apparent. This is an absolute, necessary principle for U.S. agriculture, which is why this Committee must see that it is upheld.

Many suggest making changes in separation between segregated funds and proprietary capital, but this could add complexity and bureaucracy. In the end, even if additional restrictions on financial instruments or accounting or other operational measures are proposed, we should remember a few things: that clearing members also have their capital pledged to their segregated customer funds against the single greatest threat they themselves face, which is that their customers defraud or go bankrupt on them. This has occurred with relative frequency, and because the capital of the clearing member itself was acquired to be paid into customer segregated funds, the other customers were made whole with little delay.

We also know that new financial techniques will arise hereafter, that accounting rules ambiguities will always foster different opinions, and that financial executives will always take innovative steps to maximize returns. So establishing rules that would have precluded the last problem will not necessarily preclude the next.

Exchanges have the greatest abiding interest of anyone in the solvency of the clearing members, the security and good will of their customers, and the trust of the fiduciaries that lend large sums to both. While the CFTC and the Committee should examine what the exchanges do carefully, the exchanges must propose changes that the CFTC should then consider.

This Committee must use its authority and expertise to clarify the bankruptcy status of the FCM member's responsibility to their customer segregated funds, which is the only way the futures industry at the financial heart of U.S. agriculture can possibly operate. That is the largest and most important issue, I feel, with MFG.

In the end, we need to protect our efficient system, to be vigilant for possible corruption, to send a strong signal of deterrence. We need restitution of all segregated funds, and we need a reform of our system to prevent abuse.

I would like to thank the Committee for its consideration and would welcome any questions.

[The prepared statement of Mr. Hainline can be found on page 134 in the appendix.]

Chairwoman STABENOW. Thank you very much.
Mr. Tofteland, welcome.

**STATEMENT OF DEAN TOFTELAND, FARMER, LUVERNE,
MINNESOTA**

Mr. TOFTELAND. Hello. It is an honor to be here today. I want to thank Madam Chairwoman Stabenow, Ranking Member Senator Roberts, and other honorable Senators of the Committee. I especially want to thank my home State Senator Klobuchar for her support.

My name is Dean Tofteland. I am a farmer from southwest Minnesota. My wife and I raise corn, soybean, and pigs as well as four kids 8 to 13 years old. I have been a farmer for about 25 years. Throughout those years, I have used the futures markets to transfer risk from my farm to the CBOT by selling futures contracts. These contracts have enabled me and other farmers to lock in a selling price which could enable a profit on my production.

Today I want to just briefly describe how this MF Global bankruptcy has impacted my bottom line as well as how it has influenced my confidence going forward in these markets.

This past fall, following the harvest, I locked in prices on the CME for my 2011 production. I did this by entering into an agreement where I promise to sell a set number of bushels on the exchange at an agreed-upon price for a future delivery date. To execute these hedges, I am required to post margin to an escrow account, in my case which was held at JPMorgan Chase Bank. These funds were not an investment in MF Global. These funds were not a loan to MF Global. These funds were simply collateral required by the exchange as a guarantee for my promise to deliver the bushels I had priced.

On October 28th I heard news that MF Global may be having some problems, and I immediately called my broker. She told me that since my funds were in "customer segregated accounts," they were not a part of MF Global and would not be affected. I was told that "no customer has ever lost a penny in segregated accounts." I later read about that statement before—after that, or I ran across it before. At this time I was not aware that the company was mailing bad checks to customers.

That following Monday, October 31st, I read that MF Global had filed Chapter 11 background and later learned that customer funds were missing. The accounts were immediately frozen, and I was unable to adjust my short positions. The hedge account at this time contained \$253,000. This account was also counted as collateral at my bank against my operating loan. It was not long before I received a call from my banker asking about it.

Later, my positions were transferred to a new broker with only 15 percent of the required collateral. I was then informed that I needed to re-margin the hedges within 24 hours, even though I had more than three times the margin already at the MF Global account. As a result of this, I was forced to liquidate my hedges. Since that time, prices have dropped significantly, resulting in well over an additional \$100,000 in losses.

On the morning of November 9th, I sat through a USDA Crop Production and Supply and Demand Report. This was one of the biggest crop reports of the year, and being unable to adjust positions created a great deal of stress. I have not used the futures market since.

Producers like myself commonly purchase seed and fertilizer and pay cash rents far before the crops are planted. The use of these markets is imperative to reduce risk, but we must have the confidence to do so.

As you know, this impact has been felt far across this country, and just in my local area, I ran across a feed company and local producers of livestock that are still looking for answers and how to get their money back. There are also many other untold stories.

I hope that in the following panels we can get some of those answers to fill in the blanks. I look forward to finding out those answers because the truth of the matter is that commingling money is stealing money, especially when it disappears.

I want to again thank each of you for your invitation. I am encouraged by your hard work, and I believe in the end that we will get the answers we need, and it will make for a more efficient and confident marketplace where customer assets are safe.

Thank you.

[The prepared statement of Mr. Tofteland can be found on page 159 in the appendix.]

Chairwoman STABENOW. Thank you very much.

Mr. Blew?

STATEMENT OF CLINTON J. (C.J.) BLEW, FARMER/RANCHER, CHAIRMAN OF THE BOARD, MID KANSAS COOPERATIVE ASSOCIATION, AND DIRECTOR, BOARD OF CHS, INC., HUTCHISON, KANSAS

Mr. BLEW. Good morning, Chairwoman Stabenow, Ranking Member Roberts, and members of the Committee. As Madam Chairman indicated, my name is C.J. Blew, and I do operate a farm and ranch in south central Kansas. And I am chairman of the board at MKC, Mid Kansas Co-op, in Moundridge, and I currently serve as its chairman.

MKC is a full-service farm cooperative offering a full line of supplies and services for both farm and urban customers in 11 counties throughout central Kansas. Our current membership is more than 4,800 members. MKC's grain division is operated by Team Marketing Alliance, or TMA, a LLC wholly owned by four central Kansas cooperatives operating 48 country elevators that total 38 million bushels of elevator space.

I also serve on the board of directors of CHS Inc., the Nation's leading cooperative. CHS is an energy, grains, and foods company owned by approximately 55,000 individual farmers and ranchers and about 1,000 local cooperatives.

Thank you for the opportunity today to provide not only my personal perspective, but also the perspective of MKC on the MF Global bankruptcy and the effect it has had on agribusiness and production agriculture.

I consider myself fortunate because, unlike other fellow farmers and ranchers, I do not personally have assets tied up in the MF Global bankruptcy. However, I am impacted as an individual farmer because I rely upon my local cooperative to manage my risk by forward pricing my grain.

This bankruptcy has sent a shockwave throughout the industry. We have long believed that risk to segregated customer funds held

by members of the clearinghouse was non-existent. We now realize that was not true. The attorney for the trustee in the bankruptcy case, just last week during the House Ag Committee Hearing on MF Global, also confirmed this in his reference that 100 percent of these funds need to be returned as promptly as permitted by governing regulations.

Immediately following MF Global's bankruptcy filing, MKC and its respective grain marketing arm, Team Marketing Alliance, struggled with lack of access to futures positions and had no access to the funds in our accounts. Additionally, our accounts were transferred to a new futures commission merchant, and we have spent countless hours trying to understand how and why various adjustments to account balances took place.

My cooperative continues to deal with the aftermath of this situation. At the time of the MF Global bankruptcy filing, my co-op had a significant amount of assets in segregated accounts tied up with MF Global. While we now have access to positions in our hedge accounts, only 36 percent of the initial margin funds needed for the transferred positions have been transferred to the new accounts. We applaud the SIPA trustee's proposal for an additional distribution of funds and property that would bring the value of our distributions to about two-thirds of the original account values.

However, for MKC, there is still a significant amount, or about 64 percent, of the margin funds and excess cash not yet received. This needs to be priority number one for the trustee and bankruptcy court. Segregated funds should not be part of the bankruptcy.

I am here today to ask the Committee, regulators, exchanges, and trustee to make the return of customer funds and property a top priority. Customer funds were to be segregated and not used for other purposes. The confidence in the system has been compromised, and it is imperative that we restore the integrity of the system.

The ability for thousands of businesses like MKC and CHS to hedge risk on an exchange offers producers a wide range of cash forward contracts that help optimize farm income. MKC's business model has been one that helps producers manage their risks. This includes grain marketing. Hedging and forward contracting is an integral part of that.

A key to providing any type of hedging and forward contracting is the ability to finance it. We are fortunate to have a strong relationship with our lender. Although we have that strong relationship, the MF Global bankruptcy has impacted our ability to borrow funds. It has impacted our borrowing base since the missing funds cannot be used as collateral.

Looking ahead, it will be very important to re-establish confidence in the futures markets and the safety of segregated customer funds and property. As part of the process, we must ensure the sanctity of customer segregated funds. This should include the treatment of missing funds in the bankruptcy, and those funds should have exclusive rights above the bankruptcy. This process must be a priority and expedited to make all segregated account holders whole.

In conclusion, I would ask that this situation be resolved as quickly as possible and that MKC's assets and those of other segregated account holders affected by MF Global's bankruptcy be returned immediately. I would also ask that you ensure this situation never happens again.

Thank you again for the opportunity to share my views today. This concludes my prepared remarks, and I would be happy to respond to any questions.

[The prepared statement of Mr. Blew can be found on page 99 in the appendix.]

Chairwoman STABENOW. Thank you very much, and I appreciate, again, all of you being here. We are deeply concerned about the situation you find yourselves in, and through no fault of your own.

Let me first start by asking each of you, if you were in our shoes and could say anything to the executives of MF Global or the regulators or the trustee, what would you want to say to them? Mr. Hupfer?

Mr. HUPFER. Well, I think like the other comments that were made by the other panelists, I think the money needs to be returned in a fashion—I mean, segregated accounts need to be held above the bankruptcy, in my opinion. I think there needs to be a full investigation, and we need to have some safeguards in place where this cannot happen again.

Production agriculture cannot operate and function without the use of exchange-based futures and being able to transfer risk and lock in pricing. That is integral. It is just impossible for the industry to operate without that ability.

So I think this is crucial. This affects not just commercial grain companies, but I think it affects farmers, dairymen. There are a lot of people that are greatly affected by this.

Chairwoman STABENOW. Thank you.

Mr. Hainline, what would you want to ask of those we are going to hear from yet today?

Mr. HAINLINE. Well, obviously my point was having the segregate funds a priority, but the thing that I wonder is, in light of all the financial problems that we have had over the last several years, how were these speculative investments allowed to be part of segregated funds?

Chairwoman STABENOW. Thank you.

Mr. Tofteland?

Mr. TOFTELAND. I guess the real question is: What happened to the money? This money was real money in real banks. It was not under somebody's mattress. And now it is missing. And when you have a—I know in your personal bank account, the bank knows if you are overdrawn one penny. The bank knows if you are 1 day late with your payment. The bank knows where the money is at. Somebody at the company knows where the money is at. We have to ask—if there is a debit, there has got to be a credit. Where is the credit?

And, secondly, since there were bad checks mail, there has already been crimes committed. And if the rules are broken in the case of segregated money, the segregated funds were commingled, that is also a crime. So I guess if there were crimes committed and

the money is missing, we have got to find the money and then deal with the consequences of that.

Chairwoman STABENOW. Thank you.

Mr. BLEW, what would you want to ask?

Mr. BLEW. I would agree with Mr. Tofteland. Where is the money? You know, this has a rippling effect, I think, throughout the industry. Not only does it—you have got farmers double-margining. You have got people that have stress on their lending situations already. So it is imperative we get to the bottom of it.

Chairwoman STABENOW. Thank you.

Secondly, for any of you that would want to answer this, do you think commodities firms like MF Global should be allowed to invest customers segregated money and profit from the investments? Mr. Hupfer?

Mr. HUPFER. I think segregated funds should be segregated funds and need to be treated that way. I guess that is how I feel about it. It is our money.

Chairwoman STABENOW. Mr. Hainline?

Mr. HAINLINE. I think that controls are an imperative if that investment is allowed. I am not sure that our current regimen has enough oversight to know where those monies are, and as I said previously, I think the classes of those investments have been way too far afield for protection of the customers.

Chairwoman STABENOW. Yes, Mr. Tofteland?

Mr. TOFTELAND. The issue with—I guess I have no comment about that. What was the question exactly?

Chairwoman STABENOW. Well, do you think that companies, I guess, commodities firms, should be able to invest customer segregated dollars under any circumstances?

Mr. TOFTELAND. No, I do not believe—I understand that there are some stress on the profits. Interest rates are low. It is hard for these companies to make money on their idle cash. But in this case, there were rules that were pushed. There was influence, I think, undue influence put on the CFTC and the SEC, and maybe some conflicts of interest that transpired, and the rules should not be pushed like that. So, no, there should not be any investment of these funds.

Chairwoman STABENOW. Mr. Blew?

Mr. BLEW. Segregated funds are segregated funds for a reason. We must ensure the sanctity of segregated funds.

Chairwoman STABENOW. Thank you.

Mr. Tofteland, you testified that you have not used futures markets since MF Global's bankruptcy. Could you talk a little bit more about how that affects your business not having the confidence to use that market?

Mr. TOFTELAND. Well, first of all, we are still out of a lot of capital, so to be involved here, you have to have collateral for the exchange. Unfortunately, I was forced to liquidate my hedges, and, you know, we have been unable to hedge since that time, and I am going ahead and looking at my input expenses for next year, and it is hard to—when you do your break-even analysis, you need to look at the prices offered for next year, and I just do not have the confidence right now until we get 100 percent of our cash back to have 100 percent confidence until that point.

Chairwoman STABENOW. On that point, if any of you would like to answer, my last question is: Given the bankruptcy, I assume this has caused you to take a closer look at any new futures commission merchant and its financial position. I wonder if anyone might just speak to that, going forward what this has meant to you as you are attempting to do business, assuming that you are. Mr. Hupfer?

Mr. HUPFER. Well, we work with Mr. Hainline's firm, Advanced Trading, and they got all our positions transferred in a really good fashion, very orderly. So we are in the process of—we are with a new clearing firm, and we are going to open an account through them with another clearing firm in the near future to spread our risk.

Chairwoman STABENOW. Mr. Hainline, from your perspective, how are you evaluating things differently? Or are you?

Mr. HAINLINE. It is very unfortunate, but I think you have to. Numerous clients are asking about having more than one FCM so that at a moment's notice we can transfer accounts if somebody throws up a red flag. The inefficiencies of that kind of activity that it needs to be required is rather significant, but, again, for people to protect their risks, those are some of the conversations that are, unfortunately, going on because of the system.

Chairwoman STABENOW. Thank you. I am going to stop at this point. I have run over my time. As I am sure my colleagues have noticed, we are doing 7 minutes of questions given the topic this morning. We will ask colleagues to watch closely for the 7 minutes.

I will turn now to Senator Roberts.

Senator ROBERTS. Well, thank you, Madam Chairman. Gentlemen, thank you for coming. You have certainly put a personal face on this travesty. You have accurately described the breach of trust for yourselves personally and for everybody else involved. Really, this is a violation of the most sacred rule of the futures industry, you do not break the glass in regards to segregated funds. It has not happened before until this incident. Thank you for your personal testimony. That took some guts.

I want to certainly thank you for clarifying for everybody present the severity of this issue and the personal experience that you have gone through, which I think is very helpful. We obviously need answers, and we are dedicated to that.

Mr. Blew, it sounds like—well, welcome to Washington, I am sorry under the circumstances, but at any rate, it sounds like Mid Kansas Co-op is well on its way to getting up to 72 percent of its money back, according to the trustee. You and I have visited about that. Have you received any official indication from the trustee on this? You indicated that you are at 36 percent. We need to get you up to that 72 percent.

Mr. BLEW. We have not received anything officially to get us to the 72 percent. We know we are at the 36 percent, but have not received anything officially on the 72 percent, no.

Senator ROBERTS. I hope we can get that taken care of. Seventy-two percent is better than where you stood a week ago, but you are not made whole. Walk me through the conversation that Mid Kansas Co-op is having—that is 5,000 farmers. That is my count. You said 4,800. But walk me through the conversations that you have been having with your bankers in the aftermath of the MF Global

bankruptcy. Are your bankers requiring you to come up with more collateral against your margin account?

Mr. BLEW. Well, it is pretty simple, really. We have working capital requirements that are 7 times our borrowing base, and so you take the number times 7, and that is the number that we cannot borrow.

Senator ROBERTS. For the entire panel, in your testimony this morning all of you have referenced a loss of confidence in the futures market in the aftermath of the MF Global bankruptcy. That in and of itself is of tremendous importance.

What changes are you going to make or recommend to how you or how your companies manage risk as a result of this bankruptcy? We will start with Mr. Hupfer and just go right down the line.

Mr. HUPFER. Well, first and foremost, getting our accounts transferred—

Senator ROBERTS. I cannot hear you.

Mr. HUPFER. I am sorry. I said first of all, having our positions transferred and opening another account with another—

Senator ROBERTS. Can you turn the microphone on? I am sorry. Maybe it is me. It turns red.

Mr. HUPFER. Sorry about that. Is that better?

Senator ROBERTS. Speak right into the microphone. Yes, thank you.

Mr. HUPFER. Okay. Having our accounts transferred to another clearing firm and opening a secondary account I think goes a long way toward spreading our risk. I think everybody—talking with the other commercial operators that I visited with, they are all more—I do not want to say cognizant of what they are doing with their excess funds. You know, they are withdrawing. You know, they are drawing—if they have margin excess, they are bringing it back to their checking accounts. They are not leaving it there. I think people are doing things a little bit differently as more of a precautionary measure.

Senator ROBERTS. I appreciate that.

Mr. Hainline?

Mr. HAINLINE. Well, unfortunately, the biggest problem is that because of this uncertainty, many are choosing not to utilize the futures market at this point, and so that means your alternative is to sell it to—if you are a producer, to sell it to a grain company and have no further flexibility in managing your risk. And then that also introduces you to a different counterparty risk.

So these are very dire circumstances, as Mr. Tofteland said, from November—or from October 28th, the last day he could have placed a trade with MF Global, until Wednesday of this last week—I am not sure the size of his farm, but if he had 2,000 acres of corn with an average yield of 170 bushels an acre, he had the price go down a quarter of a million dollars on his farm. And that is just catastrophic in the results of his risk management for his operation.

Senator ROBERTS. Mr. Hupfer, I apologize to you. Something is wrong with our sound system, but I think it has been fixed, and you came through loud and clear, Mr. Hainline.

Mr. Tofteland, thank you for personal statement. I know this has been pretty rough on you. Would you like to respond?

Mr. TOFTELAND. Well, I just wanted to say that this is not about myself. There are thousands and thousands of other farmers and end users and individuals, traders, people I know, somebody out there with their live savings that was taken there. And they are probably looking at their next meal and how they are going to make their payments next week.

I think the bigger issue is not just confidence in this market. This market is the basic market of—it goes back over a hundred years. The basic trading began with the cash trading on the Board of Treasury and the Minneapolis Grain Exchange, where they used to trade cash at the exchanges or trade rail cars, and then it moved to the futures. The historical basis of this is the foundation of all of our exchanges going—all of our transactions. So the confidence here really relates to the confidence in a lot of other markets, and that is why it is so important to get it right here.

Senator ROBERTS. Mr. Blew.

Mr. BLEW. I really do not have anything further. I think the panel has covered it well.

Senator ROBERTS. Okay. For the entire panel, have any of you had any conversations with your bankers about changing the operation of your risk management accounts as a result of this bankruptcy? You have told the Committee what you plan to do. Any whispering in your ear by your banker?

Mr. HUPFER. I can respond. Now it is working. Our banker called us right after the bankruptcy became public, and he wanted to know what the situation was, and we explained to him what was happening, what was going on, that we were transferring—getting our trades transferred. And since then he said just keep him abreast of what is happening, and they have confidence in us that we know what we are doing and that we can make good decisions.

Senator ROBERTS. Mr. Hainline.

Mr. HAINLINE. I have not heard specifically, but if I put my banker's hat and I was loaning money to Roberts Elevator, I do not think I would loan him as much money as I did before because I do not know your money is safe there.

Chairwoman STABENOW. And I would ask the other two folks to answer quickly, please.

Mr. TOFTELAND. Okay. Just briefly, I know with my bank—and he has talked to me about it. For every dollar that we have, we can borrow about 40 cents. If my bank was borrowing me 30 times over, I suppose he would be a little more concerned. At this time he has got confidence that we will get things figured out.

Mr. BLEW. Well, obviously the confidence in the system has been compromised, and so they are going to be unwilling to loan as much as they would have. I think the challenge in the future for me, especially for my cooperative to be able to finance my grain when I want to forward price it, is going to be imperative, and I know that has been put at risk.

Senator ROBERTS. Well, I would just say who at the end of the day ends up footing the bill for these additional costs, and I think we all know that. Thank you, Madam Chairman.

Chairwoman STABENOW. Thank you.

Senator Klobuchar?

Senator KLOBUCHAR. Thank you very much, Madam Chair. Thank you to all of the witnesses. I thought your testimony was really helpful in making people understand what this really meant to the individual farmer or elevator owner, and I especially wanted to thank you, Mr. Tofteland, for your direct testimony and honesty, so thank you for that.

I think a lot of people have a hard time understanding how all of this works. It gets so complicated. But I think from your perspective, one of the things that you focused on was that for you this was not just an investment where you were trying to make a profit. You were actually not speculating. You wanted to be able to secure yourself against risk. Could you just talk a little bit about some of the risks you faced with the cost of feed, weather, prices, and why you would get involved in doing this to begin with?

Mr. TOFTELAND. Thank you. A lot of farmers, what we will do we will lock in—like any of us, you lock in your cost of seed and chemical fertilizer many months ahead. So when you do that, you have price risk. But then during the grain season you also have production risk. So it is not unlike an end user that purchases flour. They need to buy wheat, and to lock in the prices, they will go to the exchange and lock in prices and pass the locked-in production on to their customers.

So basically we are not unlike an end user in that fashion where we just lock in the prices and use it for reducing the risk.

Senator KLOBUCHAR. You also mentioned that you were forced to liquidate your open positions after they were transferred, and I think it is important to note that even if 100 percent of the customer funds are found and returned, you will still take a loss. Can you explain how that works for people who are not familiar with your situation?

Mr. TOFTELAND. In the case that we would take a loss?

Senator KLOBUCHAR. Yes. I think the issue is that even if it is returned, you still will have a loss because of what you explained earlier.

Mr. TOFTELAND. I see. Absolutely. When you are not able to lock in your price risk, you have risk to the market. Markets move and in my cases and in many farmers' cases, if they have locked in their seed and chemical fertilizer and their inputs, if they cannot hedge that or sell to lock in that profit, they are at risk for the market going down. In my case, the market worked adversely against us.

Senator KLOBUCHAR. You know, you talked about how other people have been affected by this, and I know you are from Luverne. Not everyone in this room is probably familiar with Luverne. It was actually one of the four towns featured in the Ken Burns movie about World War II because so many people were lost from this small town of 4,000 people. Could you talk about other people that may have been affected by this that you know in this small town and the surrounding areas?

Mr. TOFTELAND. I do know, I just ran across Mike and Brad Mouw, a three-generation feed and grain operation that I used to buy my feed for my pigs from, and they are affected by this. There is also a former banker that I used to work with that finances and works with hog producers. I know a lot of livestock producers per-

sonally that have been affected. They are hooked both ways because they hedge their hogs and also they hedge their feed. So there is kind of a double-barrel effect there.

Senator KLOBUCHAR. For 25 years you have been farming, Mr. Tofteland, and you said that now you cannot use the futures market right now, you have not been able to use it since your accounts have been frozen. But, personally, what will it take to restore your confidence in the market and the safety of segregated customs funds so that you would use this market again.

Mr. TOFTELAND. I believe we are going to need 100 percent confidence that these funds are safe, and going forward, I think we are going to have to see some—we are going to have to see some results on—if there was some wrongdoing, we have to see that we—I will put it a simple way. If the cows are out, instead of building a bigger fence, we have got to make sure the fence holes are fixed and that the—you know, maybe we have got to put a little charge in the fence so next time the cow sticks its head through the fence, he will remember the shock and will not do it again.

Senator KLOBUCHAR. I will not go there with the electric fence and the commodities market, but what you are saying is that you think we have to have some rules fixed so this does not happen, as well as getting your money back. Is that right?

Mr. TOFTELAND. That is right.

Senator KLOBUCHAR. Mr. Blew, Minnesota has more farm co-ops than any State in the country, and Senator Thune and I co-chair the Congressional Farmer Cooperative Caucus, and I know from farmers all the time the central role that co-ops play in managing risk, and I would really ask you the same question that I asked of Mr. Tofteland. What do you think is necessary to restore confidence in this market?

Mr. BLEW. Well, I just think that we need to ensure the rules that are in place are enforced. We have got rules there. Let us just make sure that we enforce them.

Senator KLOBUCHAR. Okay. Very good. Does anyone want to add anything to that from the panel?

[No response.]

Senator KLOBUCHAR. All right. Very good. Thank you very much, Madam Chair.

Chairwoman STABENOW. Thank you very much.

Senator LUGAR?

Senator LUGAR. Well, thank you very much, Madam Chairman. I would like to ask you, Mr. Tofteland, you mentioned that there has to be 100 percent confidence that your funds are safe, and I am just curious as to how in this business we are talking about today or in any business you can have 100 percent confidence that your funds will be safe. Specifically, if you have to rely upon some other firm, why would you or those you are associated with have come together with MF Global?

Mr. TOFTELAND. I think what you are relating to is, you know, MF Global, did I have any idea that this was going to occur or anything, you mean? The 100 percent confidence relates to—I mean, when we came to MF Global, we actually were transferred there from a different firm. I think a couple different firms had—a lot of companies change and they purchase each other, and we came in

a transaction from, I think, ING before. But I think the bottom line is what you are saying is a lot of companies will fail, and it happens all the time on Main Street. The difference is in this case there was customer money that was affected and that was taken. So it is really about the money. It is not about—a lot of bankruptcies happen, but the way this bankruptcy has been going forward, it does not make sense because customer money should be the first disbursed, and then we would not have this issue with customers being affected.

Senator LUGAR. Yes, well, I would agree with that, and I think everyone here does. But the fact is that in business of any sort there are risks taken when you are transferring some responsibility for a service, in this case the futures market, to somebody. Perhaps you may feel this is too complex to understand who you are dealing with and who they may be dealing with, but then the panel would come back to us and say, but, by golly, there has got to be 100 percent certainty. And I do not think there is such a thing in this world.

What I am curious about is, is anybody on the panel aware that you were dealing with MF Global at all and have any idea about the nature of that firm and the sort of operations that they were involved in?

Mr. HUPFER. No. I do not think we had any idea at all that they were of the scope—that they were involved in some of the investments, some of the things that they were doing. We just cleared our trades through there, working with Mr. Hainline's firm, and we had no clue as to any of that.

Senator LUGAR. Mr. Hainline, since Mr. Hupfer had some confidence in your firm and, therefore, you may have more of a front line with this situation, why were you dealing with MF Global?

Mr. HAINLINE. We trusted the system, Senator. The Board of Trade goes to lengths to explain how nobody has ever lost money in this situation. You know, it is their standard line that they give, and it is a line you could have been proud of up until the last 6 weeks.

Your point about 100 percent is right on. There is nothing that is 100 percent. So how can you have confidence in our system? If we knew that the lenders that finance FCMs got no dollar one until segregated funds were all covered, then you could be confident that the lenders, if they were doing their due diligence, would, in effect, be looking out for the segregated funds. I think that is really the key issue that I would like to leave you with. If we had the lenders in between the segregated funds and the customers, I think we could have much more confidence that you have got due diligence that a farmer, a local cooperative cannot perform. The lenders have covenants they can put on the FCMs that borrow money from them, and that could help lead to a lot more confidence. Maybe not 100 percent, but a lot more than what we have today, and maybe more than we can get from regulators.

Senator LUGAR. Well, these covenants that you would place on the FCMs, as you say, does not, once again, offer 100 percent confidence. But the thing that disturbs me is I had conversations in New York a week ago Monday with investment bankers in various ways. I was surprised but pleased in a sense that they had been

conducting what they called “war games,” and essentially this was with regard to the European markets and the financial problems there. What would happen if various systems failed in Europe or the whole system failed or the euro failed or what have you? What are the implications back and forth with regard to their institutions?

Well, obviously, they are very severe. This is the world in which we are living. And you would have no way to know that in this case FC Global was engaging in buying bonds in some European country that is not turning out very well, or maybe you would have. I do not know how close the ties are here. But I would just say at this particular time, whether it is in the future market for agriculture or for anything, this is a very precarious period.

So I think, you know, we are all of a mind to want to know how the CFTC or the U.S. Government in any way can provide greater security for farmers and ranchers and so forth. But one of the purposes of this panel this morning, I would think, is these are folks like yourselves engaged right on the front lines who have some idea of what is going on in the rest of the world, although you may not want to know that much about it. And in this particular case, the ramifications have come home.

Thank you, Madam Chair.

Chairwoman STABENOW. Thank you very much.

Senator BENNET. Thank you, Madam Chair, and I would like to thank you and the Ranking Member for holding this hearing.

Mr. Hainline, in your testimony you said that—to paraphrase what you said, you said if we cannot have confidence in the futures market, it is going to mean lower prices for farmers and higher prices for consumers. I wonder, since most Americans do not know how the futures market works, if you could describe for the Committee in the simplest terms possible how it works and why the result that you describe is the outcome of a lack of confidence in the futures market.

Mr. HAINLINE. I think I will go back to Mr. Tofteland’s example. He buys his seed and fertilizer many months ahead of when he is going to harvest his grain. He probably should have been buying it already for the crop he is going to harvest in October of 2012. He then has risk of falling prices because he has locked in his input. If he does not use the futures market or an options on a futures market, he either stays long his price risk or he sells it to a third party—a local grain company, an international grain company—and at that point he has now entered a counterparty risk with whoever that entity is, and he also has no further upside potential if markets would rally. And if his crop is hurt because of weather, adverse weather, how does he protect himself if he has made a forward cash sale? He cannot.

And so he becomes much less efficient in his ability to adjust his operation to the changing nature in our global environment. Mother Nature just does not give him a phone call and say when it is going to be good or bad. He has to make these plans far in advance. So as he is unable to be flexible in that, that loss of flexibility means less revenue to him as a farmer.

On the other hand, whoever is selling his product to the flour mill or the ethanol plant or the export company or the chicken

feeder, whoever is selling that is uncertain when they are going to buy it from Mr. Tofteland, because he cannot make a decision either. And so all of us that buy food or gasoline are going to have a larger price to pay because of the uncertainty on when he can sell his product.

So it makes us inefficient. The seller has no idea what his real price can be because he cannot manage his risk, and the buyer has the same on the opposite side. So it totally breaks down what is the most efficient part, I believe, what really makes agriculture such a wonderful system in the United States. It just goes to the heart of what those efficiencies are.

Senator BENNET. And just to be clear for everybody who is watching, this market is not a recent creation, this futures market. This has been part of American agriculture from the beginning.

Mr. HAINLINE. Yes. You know, what is it? Since the Civil War we have traded futures contracts in Chicago, and it is a system that has evolved, and it is just miraculous now. We do not flash fingers as much as we did before. It is electronic trading. That brings it a lot closer to our farmers. Again, another efficiency that I think has been good for most people. But you have got to have trust, and this whole situation has shot that.

Senator BENNET. Well, that brings me to my second question, and I would be happy to have the rest of the panel answer this as well. You have described well the economics of this for our farmers, the consequence of it, but it also has a profound psychological effect. And I wonder if the panelists would mind talking a little bit about what the scale of this has meant to all of you, to your communities. How large an impact has this been on your work?

Mr. HUPFER. Well, personally in our situation, we do not have a tremendous amount of capital at risk, but it has just shaken the confidence for commercial grain firms in the system. The system has worked for a long time. It has been very efficient.

I think, you know, trust goes a long way. Without the ability to lock in prices, I think—how do we go out and, like Mr. Tofteland was mentioning, lock in his inputs? How do we offer him a price for 2012 and beyond where he can deliver—he can lock in a price and deliver his grain at a future time. As we buy grain in the commercial companies, commercial sectors, we cannot find a cash buyer immediately. We have to hedge. We have to pool our inventories. It is very efficient in how the system works.

So I guess locally, talking to some of the other firms, it has just really shaken the confidence, and everybody is just kind of wondering what is going to come out of this.

Senator BENNET. Mr. Blew, do you have a view?

Mr. BLEW. Yes, my comment was just going to be that farming is a risky business today, and it is a margin business. We have to be able to manage it, and we have to have the confidence in the system that we have the capability to manage it.

Senator BENNET. Mr. Tofteland, if you have got anything else. You have been the star witness.

Mr. TOFTELAND. Just real briefly, because I think a lot of this is transparent back on the farm. What happens, it has just been assumed you can transfer your risk or you could call your elevator and make a verbal sale to the elevator, and the elevator will turn

around and hedge their position immediately, and then later they will follow up with the paperwork. But they will actually make a verbal committed sale by picking your phone up and saying, yes, I will sell 10,000 bushels of corn, and he writes it down and makes a transaction based on our word. It is just a handshake agreement until you follow it up with paperwork.

We have been sitting back, and I think we take it for granted because there is the SEC and the FTIC and FERA and even the CME is all involved in regulating the industry and watching all this for us. That is what we have these people for. They are experts in what they do. And I think we need to learn to—well, we need to fix what is going on here, but going forward, we do have a lot of people that are in the ball field working on this. So that will be a part of the confidence to get those structures right.

Senator BENNET. Well, Madam Chair, in my State and many States, the farm country is actually leading this recovery as commodity prices have come back, and this could not, I think, have happened at a worse time, and at least for my part, I cannot imagine anything that would help restore that confidence than getting the money back to the people that wonder where it went. So thank you for holding this hearing.

Chairwoman STABENOW. Thank you very much. I could not agree more.

Senator Grassley?

Senator GRASSLEY. Madam Chairman, I am going to pass up asking questions of this panel because I want to get to the other panel, but I would say that the same concerns that have been expressed by all the other people, hearing their problems in their respective States, is also true of Iowa as well. So I thank our panel for coming here and giving testimony for farmers and their protectors throughout the country.

Thank you.

Chairwoman STABENOW. Thank you very much.

Senator Thune?

Senator THUNE. Thank you, Madam Chairwoman and Senator Roberts, for holding this hearing. As Mr. Blew has said, farming is a risky business, and hedging is designed to help farmers and producers manage that risk. I cannot help but think in light of these recent developments surrounding MF Global that all of us have been made aware that a very critical and important tool used by production agriculture, and that is, futures markets and hedging, is not as safe as we once thought.

I have, I guess, three specific questions that I hope get answered here, probably perhaps better answered by the folks from MF Global, the regulators, or the exchange. But, one, how was MF Global able to continue its risky operations to the point that it had no alternative but to declare bankruptcy? Secondly, how could the MF Global bankruptcy result in the loss of hundreds of millions of dollars in segregated accounts without any corrective action being taken prior to this happening? And then, finally, how can we be assured that this is not going to happen again?

And, Madam Chairwoman, I would suggest that I believe we have got two very distinct responsibilities. One is to make sure that we make every conceivable effort that those who have lost

money due to the failure of MF Global are made whole; and, secondly, that we do everything within our jurisdictional power to ensure that futures markets are safe for those who use them. And so I look forward to the testimony that we are going to receive later as well as I appreciate very much what we have heard from our panelists already this morning.

But I do want to come back to some of the ways in which production agriculture uses the markets, and I want to ask the producers out there, Mr. Tofteland and Mr. Blew, about when did you start using futures contracts to hedge your crops?

Mr. TOFTELAND. I remember back in college I would come home, and I had a course at the university about hedging, and this was back in 1998, during the drought, and I asked my dad about a call option to reduce the risk of the crops he had already forward contracted and, you know, with the dry weather and not getting the crop, and literally from back in those days, came back from school and started applying the principles of hedging from very early in my career.

Senator THUNE. Mr. Blew?

Mr. BLEW. Well, as I have stated, I did not personally use the futures markets, but I do indirectly through my cooperative. They help me manage my risk very well by helping me to lock in the margin. They are doing the input side, and they are also doing the grain side. But they have to be able to lay that risk off, and so I know that indirectly I am affected because they have to have that ability to do that.

Senator THUNE. And how would you say that hedging has affected your profitability?

Mr. BLEW. Well, if they do not have the confidence in the system to be able to offer me the service that they have by locking in that margin, then if I am unable to lock in that margin, I am at risk for a potential loss because I cannot lock in my profitability.

Senator THUNE. Let me ask you both this question: What will have the most impact on your profitability in the future—the passage of the next farm bill or the continued safe use of futures contracts?

Mr. BLEW. I can answer that one pretty quick. The continued safe use of futures contracts.

Senator THUNE. Do you share that view, Mr. Tofteland?

Mr. TOFTELAND. Yes, I do share that view. I think a risk management package in both cases would be effective.

Senator THUNE. Let me ask you something about how this problem is impacting just kind of land prices and rents across agriculture. Do you believe that this is a problem that has been widespread enough now in your areas that cash rent land prices are going to be affected in 2013 and future years?

Mr. TOFTELAND. I believe when you look forward, with the futures market we are able to pick a window, look through a window to see what the futures prices are a year or 2 years out. And so with a lot of cases, a couple years ago, you could not even market your crop through a local elevator more than maybe 3 months out because of the uncertainty in the markets and the potential risk and exposure. It is very possible that could potentially affect rents

and land if you are not able to look through that window and see what the future is offering.

Senator THUNE. And that is the question. If this collapse results in a diminished use of futures to help hedge inputs and commodities in the future, does that impact cash rents? Mr. Blew, do you care to comment on that?

Mr. BLEW. That would be speculation on my part. I certainly can make the argument that it would have an effect at some point, yes.

Senator THUNE. I guess this is more of coming back to the impacts on your operation in the future, and some of you have talked about the importance, as you go in dealing with your lenders, too. What needs to be done, in your view, moving forward—and this question has been asked, I guess, in some different forms throughout the course of the day—so that you will have full faith in the morning that when you wake up, your account is not going to be frozen and money missing from that account? What would make you feel more comfortable and more confident in dealing with your banker with regard to what has happened and what needs to be done as we move forward.

Mr. TOFTELAND. As we move forward—I guess I am not sure.

Senator THUNE. You need a safe system.

Mr. TOFTELAND. Yes, a safe system, basically. That is correct, and confidence.

Senator THUNE. Clearly what has happened here has demonstrated that whatever—there are things that clearly can fall through the cracks. I guess we have learned that lesson.

Anything, Mr. Blew, you can add to that?

Mr. BLEW. Well, with all due respect to members of the Committee and everybody in Washington, that is what we are here to figure out.

Senator THUNE. Okay. We appreciate your testimony and your willingness to share your personal examples of how this impacts you. It certainly has, I think, shined a spotlight on the importance of us getting this right so that something like this does not happen in the future.

I think the story here, Madam Chairwoman, is to figure out what went wrong and to figure out how we fix it so it does not happen again. You have been very helpful in that regard. Thank you.

Chairwoman STABENOW. Thank you very much.

Senator Harkin?

Senator HARKIN. Thank you, Madam Chair. Nobody, I believe, is saying that MF Global or any other futures firm owes customers a guarantee against all losses. I have heard that. But I want to get a sense of whether customers who are trading futures realize that under the rules in place when this happened, a futures commission merchant could invest segregated customer funds not only in treasury securities and cash but in municipal bonds, securities of Government-sponsored enterprises, commercial paper, corporate notes, sovereign debt, money market funds, and even further, could use customer funds to trade in-house using what are called repurchase and reverse repurchase agreements. Moreover, any profits on these investments of customer funds accrue to the firm and not to the customer.

Now, I was looking here at a timeline chart. Pre-2000, a futures commodity merchant could invest your customer's funds in treasuries, municipals, or obligations fully guaranteed by the U.S. Government. That is it.

Now, look at the timeline from then to now. Now we got into corporate notes and sovereign debt and money market mutual funds. And then we got into in-house transactions and on and on and on.

Welcome to the world of deregulation, folks. That is what you get. That is deregulation. And now we hear people say we have got to have even more deregulation. I wonder. My question to all of you is: Would a farmer, an elevator manager, or any other typical customer of futures commission merchant, such as MF Global, ordinarily know that customer funds were commonly invested in such a variety of instruments and securities, profits of which do not accrue to the customer but only to the house? Would a farmer or elevator manager know that? Would you know that, Mr. Tofteland?

Mr. TOFTELAND. I had no idea.

Senator HARKIN. Did you know, Mr. Blew?

Mr. BLEW. No.

Senator HARKIN. Now, Mr. Hainline probably knew because you have a futures commission.

Mr. HAINLINE. It is possible to know, but it is very difficult to find out what the specifics are, Senator.

Senator HARKIN. Well, do you believe it would affect the decisions of customers, Mr. Tofteland and Mr. Blew, if you knew how and with whom they do business if the futures customers knew that the merchants were able to invest and move around these customer funds? Would that maybe affect with whom you dealt?

Mr. TOFTELAND. It certainly would if I knew that—

Senator HARKIN. Would transparency help?

Mr. TOFTELAND. It would. If I had any idea that what was going on there—

Senator HARKIN. Well, let me ask one last question— maybe not quite the last. I see a little more time left. Do you believe it would be better if customer funds could only be invested in treasury securities or cash, as I understand is required by the Securities and Exchange Commission as to securities brokers and dealers? I am just asking. I am saying, Should we go back to where we were pre-2000?

Mr. TOFTELAND. Well, those investments seem a lot more secure than the latter.

Senator HARKIN. I will read them to you: treasuries, municipals, and obligations fully guaranteed by the U.S. Would that give you a little bit more—

Mr. TOFTELAND. I understand those,

Senator HARKIN. You understand those, sure. We understand those. I am not certain I understand what in-house transactions are and purchase and repurchase agreements and how they shuffle this money back and forth. And I think that is part of this whole deregulation effort, was to put a cloud in there. It is a cloudy kind of thing. No one really knows what is going on and how these monies are being used. Quite frankly, these merchant houses are using the money to make a profit. I cannot say I blame them. They got a bunch of money, and they see some unique investments they can

make, why not go ahead and do it? Because their argument to us—believe me, I have been involved in this since they first came and wanted to get rid of the Glass-Steagall Act, which I was one of seven members to vote against. Ever since they got rid of Glass-Steagall, all we hear about is, well, if they can just use these funds and invest it in these things, they make a little profit and, therefore, they become more efficient in handling your money, you see. And that is the argument that has been used here for the last 12 years. And the Congress continually just says, okay, fine, just fine, just keep deregulating it.

Well, I guess I would just ask: Doesn't the MF Global disaster illustrate the unavoidable conclusion that we must have strong, transparent regulations for the protections of customers and the public? Mr. Blew? Or do you want to just live with this nice big deregulation and take your chances, roll the dice?

Mr. BLEW. No, you know, I cannot speculate. I guess what I would—the only response I would have to that is I do believe that we have regulations in place, and I am not sure that they were enforced.

Senator HARKIN. Yes, we have regulations in place. They can invest in all these things. I am asking you, Should they be able to invest in all that stuff?

Mr. BLEW. I am going to let you figure that out, Senator.

Senator HARKIN. Well, no, I mean, you are at the bottom end of this. Mr. Tofteland, should they invest in all these things and not even let you know what they are investing in?

Mr. TOFTELAND. Well, I do not agree that—I personally would not have invested in some of that, so if they took the funds that I entrusted there and did that, I do not think that should be the case. As far as the regulation goes, that would be something for the CFTC and your Committee to look at.

Senator HARKIN. Mr. Hainline, any view?

Mr. HAINLINE. I tend to agree with you, Senator. If I wanted to make those kind of investments, I would either buy them myself or invest in the company's—the stock of a company. If I have got segregated funds that I need to have secure, that is not the purpose.

Senator HARKIN. Very good. I agree with you.

Mr. HUPFER?

Mr. HUPFER. Senator, I agree that they should be segregated funds and only safe investments, there would be more disclosure. We were not aware that our money was being invested in these transfers or any of this type of thing was going on. I guess that is how I feel.

Senator HARKIN. Thank you.

Thank you, Madam Chair.

Chairwoman STABENOW. Thank you very much.

Senator BOOZMAN?

Senator BOOZMAN. Thank you. We appreciate you all being here. You all are farmers, and you all are used to taking risks. I think you can argue as to what is appropriate or not, but I would like to follow up on Senator Harkin in the sense that, again, based on the materials that were presented to you as you were sold, you know, whether or not to do this, did you—I just want to be clear.

You felt like you did not understand the risk that you were getting into. Is that correct? You did not realize that the funds could be segregated, that you could lose your money in this manner?

Mr. TOFTELAND. That is correct. I was just assuming that would be—it is something that has been done and trusted for 100 years.

Senator BOOZMAN. I have got the CME, Clearing Financial Safeguards, you know, and this is a lot of information. But when you read through it, it does appear that things are pretty secure. So that is a fair statement, because, again, we can argue as to what is appropriate and what we need to do in the future. But at the very least, you know, you need to be aware as you get into a deal, you know, what is at stake, what the risks are, and it seems very apparent that was not the case.

Again, thank you very much for being here.

Chairwoman STABENOW. Thank you very much.

Senator Brown?

Senator BROWN. Thank you, Madam Chair. Thank you for holding this hearing, and I appreciate especially the comments from all of you. I just arrived, but I saw your testimony and appreciate your comments about needing to build confidence. And Senator Harkin's comments especially were important. You know, it is not often we have an opportunity, I think, to see—to put a face on decisions made by people in this town, and that is particularly important in this hearing, especially the two gentlemen on the right. It is an important reminder that the actions of Congress and watchdogs like SEC, like CFTC, have real-world consequences.

Like most States, Ohio is home to companies that have fallen victim again to the culture of recklessness and greed. In Upper Sandusky, a town about 40 miles west of where I grew up, a feed and pork producer, Kalmbach Feeds, uses a commodity broker who uses MF Global. When they heard that MF Global was experiencing difficulties due to risky bets on European debt, they tried to withdraw their funds and could not. A metal refinery in southeast Ohio, in Appalachia, Ohio Precious Metals, was told their money was safe. Now both these companies are stuck in limbo as the CFTC and CME search for \$1.2 billion. They are the latest of the victims of Wall Street fraud and greed and whatever other adjectives we want to use.

Let me, before my question, put a little bit of historical context. In 2000, the CFTC relaxed its Rule 1.25 restricting how companies can invest client funds, a giant change that helped create the conditions for MF Global's failure. That same year, Congress passed a law preventing regulation of over-the-counter derivatives, which then grew to a \$464 trillion market in the first half of 2008. Last year, the SEC brought charges against Goldman Sachs for selling its clients' mortgage bonds that it knew were doomed to fail, then betting against those very bonds, as you have read by now.

One of these misguided policies hurt investors; another caused a catastrophe for our Nation's economy; the third did both.

These episodes demonstrate that rules and accountability must keep pace with developments in the markets. Last year, Dodd-Frank included what is the now famous Volcker Rule to ban banks from making risky proprietary trades for their own accounts, just like those made by MF Global. We passed this provision because

these bets are dangerous and because they pit banks against their own customers. And when that happens, the customer always loses. Unfortunately, efforts like the Volcker Rule are met with powerful opposition from powerful special interest lobbyists in this town.

Wall Street and its allies in Washington are seeking to prevent implementation of the important reforms we passed last year. They are seeking to defund not only they wanted to weaken regulations further, as Senator Harkin said; they are seeking to defund agencies that watch over financial markets. So as Mr. Blew—as you both said, we are not able—you know, that these rules may have been on the books. They were not carried out partly because Wall Street allies in this town and in this Senate want to defund these agencies so that even if the rules are in place, there is not the money to enforce them.

Finally, these same interests blocked the appointment just last week of the Director of the new Consumer Financial Protection Bureau, somebody I have known for 20 years from Ohio, Richard Cordray, whose sole mission was to protect Main Street against these kinds of Wall Street abuses. And unlike ever in Senate history, he was blocked not because he was not qualified but because more than 40 Senators here, allied with Wall Street, did something they had never done before. They blocked a nominee because they did not like the agency, even though the agency had been created by an act of Congress with more than 60 votes, a supermajority, 2 years later.

Markets require transparency and clear rules of the road for all participants and accountability when those rules are broken. Watchdog agencies need adequate resources to prevent unscrupulous Wall Street actors from again taking advantage of farmers and small manufacturers in my State and across the country. It puts companies in States like mine at risk that rely upon these markets to deal with business predictability to smooth out the busts and the booms.

So here is my question for each of the four of you, starting with Mr. Blew on the right: What would you say to those who, one, want to defund the regulators; two, want to weaken the regulations; three, fail to confirm somebody that would be a consumer watchdog—pardon my mixed metaphor but would be a cop on the beat for consumers? What do you say to those politicians and regulators that seem so little interested in protecting Main Street? Mr. Blew?

Mr. BLEW. Well, I cannot—again, I cannot speculate whether or not we need to regulate, deregulate, overregulate, whatever we need to do. I just know that we need confidence in the system to be able to manage risk, and so however we achieve that, that is fine. But whatever rules we do have in place or have in place in the future, we need to ensure that they are enforced.

Senator BROWN. Okay. Mr. Tofteland?

Mr. TOFTELAND. I do not know if it is an issue so much here whether it is left or right. It is really an issue of what is right or wrong. And I think we can go ahead and build a bigger fence. But if we have—and as long as we have the guy that builds the fences or people that build the fences show the cows where the holes are

at, you could build the biggest fence in the world and it will not work. So I think we have maybe a problem with some big cows.

Senator BROWN. Well put.

Mr. HAINLINE. I think your point on efficient transparency is very important. I think oversight is really key. The reason we are here today is this Committee has oversight over this area, and so I think oversight in anything the Government gets involved in is key. And so with respect to your question, I am not sure what the oversight of those other positions are.

Senator BROWN. Mr. Hupfer?

Mr. HUPFER. I guess I feel we need to enforce the regulations that are in place. I think Mr. Harkin made some good points about what can be invested, where the money can be invested, whether it is safe investments, and transparency is a huge issue. I think this body—like I said, as we move forward, that is why we are here, to get some answers and to try to come to some kind of a resolution on this.

Senator BROWN. Thank you.

Thank you, Madam Chair.

Chairwoman STABENOW. Thank you.

Senator Chambliss?

Senator CHAMBLISS. Thanks, Madam Chair.

I understand that, gentlemen, you all have testified that you were not aware of the use by MF Global—whether they did so or not, but you were not aware of the use by them of your funds to carry out proprietary trades. Is that a fair statement from all four of you?

[No response.]

Senator CHAMBLISS. So my question is: What would you have done if you had known that? What do you think your recourse rights are? And what would you have done if you had somehow been advised that they were using your funds for proprietary trades? Mr. Hupfer, let us start with you.

Mr. HUPFER. Well, I guess Mr. Lugar made the point that it is a risky world. I think that any good businessman would spread his risk, probably open an account at another clearing firm, maybe more than one account, and kind of divide your capital or spread your risk in that manner.

Senator CHAMBLISS. Okay.

Mr. HAINLINE. If the degree of leverage had been known, as has come out subsequent, I am sure we would not have been clearing MF Global.

Mr. TOFTELAND. I just want to say that businesses are going to continue to fail, and when a business fails, customer assets have to be preserved and have to be—this has happened before in this industry. Companies have failed. Customer assets have transferred the next day, and we went on his business. In this case something else happened, and that is what we ought to look into.

Mr. BLEW. Well, without a doubt we would have spread the risk to other futures commission merchants,

Senator CHAMBLISS. My point in asking that is that as we move forward, I wonder if there ought not to be some measure by which a customer like the four of you would be made aware of such a transaction. And it is easy to look back and see now what you

would have done, but I think I hear all of you saying you would not have been happy with the fact that there were proprietary trades using your money.

Lastly, and if this has been asked, I apologize, but I come from ag country, too. I know how hard it is in these times to get funding for your operating loans, and this is that time of year when farmers are negotiating for operating loans. What kind of impact has this had in your respective parts of the country with your customers? Again, Mr. Hupfer, let us start with you.

Mr. HUPFER. Well, at this point in time, in terms of us being a commercial agribusiness, in terms of financing for farmers, I do not think that is really—I do not think we have the real true answer on that yet. I do not think we are far enough along with this. I have talked to some of the lending institutions, and I think everybody is just trying to see how this plays out. I guess I would defer maybe over to Mr. Blew and Mr. Tofteland on that.

Mr. TOFTELAND. Well, I have yet to speak with my banker in detail. After this hearing when we get back, we will talk some more. He has assured me that he is with us 100 percent and wants to work with us in the future. You know, in my case we will have to borrow more money.

Mr. BLEW. Well, I think grain as a lender was always seen as a secure bet, and I believe that if we do not restore the confidence in the system, that could come into question. It is fairly simple math right now. Our lenders puts working capital requirements on us of seven times the number, and so you take the number that we have lost and take it times seven, and that is what we are out as far as what we can borrow.

Senator CHAMBLISS. Thanks, Madam Chair.

Chairwoman STABENOW. Thank you very much.

Senator Gillibrand?

Senator GILLIBRAND. Thank you, Madam Chairwoman, for holding this hearing. Thank you, Mr. Ranking Member. Thank you all for giving us your testimony.

The questions that I had have been asked, and I appreciate the time you have taken to brief this Committee, and I will reserve the remainder of my questions for the next panel.

Thank you very much.

Chairwoman STABENOW. Thank you very much.

Senator Hoeven?

Senator HOEVEN. Thank you, Madam Chairman.

I know this line of questioning has been asked. I would like to go into it for just a minute. But, again, it goes to if the company was not dipping into customer accounts, segregated accounts, how could the customer account or the segregated account come up short, in your opinion? Is there any way those accounts could have been short unless that was happening? And I would start with Mr. Hupfer and also ask Mr. Hainline to respond to that as well.

Mr. HUPFER. Could you—I guess your question is how could we have known that they were—

Senator HOEVEN. No, no.

Mr. HUPFER. I am sorry.

Senator HOEVEN. In your opinion, if MF Global was not taking dollars out of those custodial accounts or dipping into those custo-

dial accounts for company purposes, how would customer accounts come up short? In your opinion, is there some other way other than the company going into those accounts?

Mr. HUPFER. I guess I do not see how there would be any other way.

Senator HOEVEN. That is my question.

Mr. HAINLINE. It is either sloppy recordkeeping or it is theft.

Senator HOEVEN. And was there any indication at any time to you that customer accounts were being used for company purposes, any indication, any reporting to you at any time?

Mr. HUPFER. No.

Mr. HAINLINE. No.

Senator HOEVEN. Did you try to withdraw dollars at any time when you realized MF Global was having trouble? Or at what point did you try to withdraw dollars, and what was the reaction? Were you stopped, not stopped? What was the communication?

Mr. HAINLINE. Towards the last of the week that they were trading, lots of smoke in the situation. To transfer positions, normally the positions transfer one day and the money transfers the next day. If you are an FCM that would be accepting these new positions, your risk is you get these new positions in a transfer and the funds are frozen the following day, and that chilled many FCMs from accepting transfers at the end of this. So it was another result of this problem.

Senator HOEVEN. So by the time you were made aware of the problem or the magnitude of the problem, you really did not have an ability to withdraw customer funds?

Mr. HAINLINE. Well, that is the reason there are so many bounced checks out here.

Senator HOEVEN. Mr. Hupfer, anything?

Mr. HUPFER. I would say that is correct. We had no knowledge, we would not have that ability. There was no opportunity to do that.

Senator HOEVEN. To Mr. Tofteland and Mr. Blew, is your understanding still that you will receive 72 percent of your account, either directly or transferred to another company?

Mr. TOFTELAND. That is my understanding.

Senator HOEVEN. And you have not had any communication beyond that?

Mr. TOFTELAND. Not beyond that. Just that they are looking at—or the trustee and the judge have worked to get it to 72 percent. Beyond that I am not sure what will happen. I want to make sure—I do not want to see that our customer funds are thrown into the pool with the creditors because if there is \$40 billion at the holding company level and they liquidate the FMCI down here or MF Global, Inc., you know, there should be funds available. We should be made whole immediately. We would not be here if that was the case.

Senator HOEVEN. Absolutely, and I absolutely understand how important that is. So at this point the indication to you from the trustee is 72 percent of your funds would come back to you. Any indication of timeline and any further indication on this issue of whether customer funds have a priority versus bond or equity holders?

Mr. TOFTELAND. I wish there was more transparency in that process. I wish that we could look at—I wish the trustee would released where the money is at that he has found already so we could at least find out if it is at JPMorgan Chase or if it is—I mean, where it is at. It would be nice to see some transparency in that process. You know, maybe it just an issue of understanding. I hope is not a conflict because it is kind of confusing how this all works, but in any bankruptcy, when you have customer funds, in any business, it has got to be kept separate. It is like if I bring my pickup to the car dealership to get the oil changed and over the weekend they close the doors, the bank comes in, and the next day they put my pickup on the lot with the cars that are going to be foreclosed on, and, you know, my pickup is my pickup. So it is customers. So it really should not be an issue.

Senator HOEVEN. Well, transparency, understanding how they are going to approach this issue, and then also timeline, knowing when you are going to have use of your dollars, all these are important.

Mr. TOFTELAND. Exactly. I have no idea. Maybe 3 weeks, maybe 4 weeks, but no idea for sure on my particular case.

Senator HOEVEN. And that is important information for you and for other producers.

Mr. Blew, same questions.

Mr. BLEW. Well, I would be the same way. We have not heard anything officially. We know that is what has been proposed, but nothing official as of yet.

Senator HOEVEN. And how is that communication being provided to you?

Mr. TOFTELAND. In my case, working with the Commodity Customer Coalition, and they represent 8,000-some customers now, farmers, ranchers, elevators, and individual people, so that is where I get my information recently, and working with them.

Senator HOEVEN. And, Mr. Hupfer and Mr. Hainline, communication to you and your ability to communicate with your customers, could you just touch on that?

Mr. HUPFER. Communication-wise and working with Advanced Trading, Mr. Hainline's company, has been great. They have kept us abreast of the situation so we have some kind of an idea what to tell our customers. Right from the get-go, they were on top of this, and I give them high marks for that.

Mr. HAINLINE. The trustee's website has a lot of information. The CME has done a good job of putting out information. There has been a number of media reports. So, you know, those are the areas that we are able to get information from.

Senator HOEVEN. With customer dollars tied up, though, for your farmers and ranchers, what are they doing? How are they operating without those dollars?

Mr. HAINLINE. They are probably having to ration their risk management activities. They are performing less risk management than they would have otherwise. So they are taking more risk because they do not have the assets there that are tied up.

Senator HOEVEN. Mr. Hupfer.

Mr. HUPFER. I would agree with what Mr. Hainline said.

Senator HOEVEN. Thank you, gentlemen, for coming in. We appreciate it very much.

Chairwoman STABENOW. Thank you very much.

Senator Conrad, did you have questions?

Senator CONRAD. You know, in the interest of time, given the lateness of the hour, let me just say what an excellent panel this has been. We very much appreciate your willingness to come forward and state publicly what has happened to you. You certainly have our sympathy. We are hopeful that before this is over there will be 100 percent recovery. Certainly that is what you deserve. And I think this Committee will be very focused on trying to make certain that you get every dime back that you put in customer accounts that should not have been at risk.

I thank the Chair.

Chairwoman STABENOW. Thank you very much. I think everyone on this Committee absolutely agrees with that statement.

I notice that Senator Nelson has just joined us. Senator, I do not know if you have questions as we are wrapping up this panel.

Senator NELSON. No. I think most of the questions have been asked. I will wait for the next panel. Thank you, though, Madam Chair.

Chairwoman STABENOW. Thank you very much.

Thank you again to each of you for traveling here to be a part of this, and I want you to know that we are laser-focused on doing everything in our powers to make sure you get your money back. So thank you very, very much, and we would excuse you and ask our next panel to come forward. We will take a moment as we change panels. Thank you.

[Pause.]

Chairwoman STABENOW. Thank you very much for joining us for this very important hearing. Let me introduce our witnesses.

First, our first witness is Mr. Jon Corzine. Mr. Corzine is the former Chairman and CEO of MF Global Holdings. Before becoming CEO of MF Global, Mr. Corzine was the Governor of New Jersey from 2006 to 2010. Prior to serving as Governor, Mr. Corzine served as a Senator from New Jersey. From 1975 to 1999, he worked for Goldman Sachs as a bond trader, eventually becoming chairman and CEO.

Next we have Mr. Bradley Abelow, president and chief operating officer at MF Global. Prior to joining MF Global, Mr. Abelow was a founding partner of New World Capital Group. Before co-founding New World, he was chief of staff to Governor Corzine.

Lastly, we have Mr. Henri Steenkamp, chief financial officer for MF Global. Before joining MF Global, Mr. Steenkamp spent 8 years with PricewaterhouseCoopers, including four years in the New York office as part of its transaction services group where he managed a variety of capital-raising transactions on a global basis for multinational companies. Mr. Steenkamp is also a chartered accountant.

As with our previous panel, we would ask that you rise so I could administer an oath and ask that you raise your right hand. Do you swear that the testimony you are about to present is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CORZINE. I do.

Mr. ABELOW. I do.

Mr. STEENKAMP. I do.

Chairwoman STABENOW. Thank you very much.

At this point we will welcome Mr. Corzine.

**STATEMENT OF HON. JON S. CORZINE, FORMER CHAIRMAN
AND CHIEF EXECUTIVE OFFICER, MF GLOBAL HOLDINGS
LTD., NEW YORK, NEW YORK**

Mr. CORZINE. Thank you, Chairwoman Stabenow, Ranking Member Roberts, and distinguished members of the Committee. The statements of the previous panel pretty powerfully confirm the harsh fact that MF Global's bankruptcy has devastated people's lives and undermined confidence in markets. I recognize that my concerns about their anguish and loss of confidence does not provide solace for those losses or hardships, and that is true whether those hurt are customers, employees, or investors.

As the chief executive officer of MF Global—and I say this with all sincerity—I truly apologize to all those affected.

As you know, I have provided a written statement to the Committee, and I testified before the House Committee on Agriculture last week. I am here to answer your questions as well. Before I do, I wish to make a few additional points in light of my earlier testimony.

Several of the questions last week concerned whether I was aware of any money that belonged to customers being used improperly. I tried to answer those questions to the best of my ability, but I want to be clear. I never gave any instruction to misuse customer funds. I never intended anyone at MF Global to misuse customer funds.

I also want to address the missing money. Again, as I said, I was stunned to learn that hundreds of millions of dollars of funds were unreconciled on Sunday evening, October 30th. And while people worked very hard into Monday morning to reconcile the accounts, ultimately their efforts were unsuccessful.

I note that in response to questions about the whereabouts of the missing funds, both CFTC Commissioner Sommers and the SIPC trustee explained that, to trace missing funds, it will be necessary to analyze and reconcile multiple hundreds of pages of daily transactions, multiple bank statements from many countries, and to review account records of more than 38,000 customers. In the ordinary course of business while I was at MF Global, I would not have seen those records, and I have no access to them now.

What I do know is that over the last days at MF Global I was focusing on selling the company and liquidating assets so that there would be adequate cash and resources to handle what ultimately became a run on the bank.

For example, on Thursday I directed the sale of approximately \$1.3 billion in commercial paper in order to meet anticipated customer demands. I also directed the sale of hundreds of millions of dollars of MF Global proprietary assets. On Friday I directed sales of other assets, including approximately \$4.5 billion of Government agency bonds and attempted to sell other securities.

As I sit here today, I do not know whether all of these and many other transactions were properly recorded and effectuated, or

whether banks and other counterparties involved in such transactions properly credited the right accounts for these sales, or are holding money that is rightfully due to either MF Global or its customers. Nor do I know whether the back-office professionals at the firm or at other institutions made errors or miscalculations under the extraordinary stress.

Questions have also been raised about the compliance and risk systems at MF Global and the controls on segregated funds. During my tenure we employed, including many new hires, dozens and dozens of highly regarded and trained professionals in the areas of risk, finance, compliance, legal, internal audit, and back-office operations. We also retained prominent outside auditors, consultants, and lawyers to make sure MF Global operated lawfully. Indeed, until Sunday night before the bankruptcy, I believed that the people and systems at MF Global were properly protecting client funds.

For example, on the Friday before the bankruptcy, JPMorgan Chase contacted me and others at the firm about certain overdrafts and whether funds had been transferred in compliance with CFTC rules. I had no personal knowledge about the issues, so I asked people, senior people in the back-office in Chicago and Legal Department to become directly involved in resolving these issues. So even in the midst of the chaotic last days of business, I had confidence in our people and systems.

So before I respond to your questions, I want to say again, I apologize to our customers, the farmers and ranchers, the gentlemen that we saw here today, and the people they represent in the real world, our employees and our investors. My pain, and my embarrassment, do not blind me to the fact that they bear the brunt of the impact of the firm's bankruptcy.

I am willing to respond to the Committee's questions.

[The prepared statement of Mr. Corzine can be found on page 101 in the appendix.]

Chairwoman STABENOW. Thank you very much.

Mr. Abelow?

STATEMENT OF BRADLEY ABELOW, PRESIDENT AND CHIEF OPERATING OFFICER, MF GLOBAL HOLDINGS LTD., NEW YORK, NEW YORK

Mr. ABELOW. Madam Chairwoman, Ranking Member Roberts, members of the Committee, thank you for having me here today.

The bankruptcy of MF Global was a tragedy for our customers, our employees, and our shareholders. For many of our customers, including many of your constituents who have still been unable to retrieve funds that are rightfully theirs, it has imposed extreme financial hardship. More than 2,500 employees have either already lost or will soon lose their jobs through no fault of their own. Shareholders have seen the value of their investments reduced to almost nothing overnight.

As the president and chief operating officer of MF Global, I am deeply sorry for the hardship they have all endured. While I know that nothing I say can ease their pain, I hope that through my testimony today I can help this Committee understand what hap-

pened at MF Global and how we are attempting to unwind the company in a manner that provides maximum value for all parties.

I joined MF Global in September 2010 as chief operating officer. I was given the additional title of president in March 2011 and served in that capacity through the bankruptcy filing this October. After the filing, the firm's board asked me to remain in my position to work with the various trustees and administrators to close the firm's operations, which I have attempted to do over the last 6 weeks.

From my perspective, based on what I was able to observe at the time, there were a number of factors that led to MF Global's demise. First, it appeared that in mid-October of this year the market had become increasingly concerned with the firm's exposure to European sovereign debt. Second, beginning in late October, the ratings agencies rapidly and repeatedly downgraded the firm's credit rating. Third, the company reported disappointing earnings on October 25. The combination of those three events— increased concern about exposure to European sovereign debt, a series of ratings downgrades, and disappointing earnings— created an extremely negative perception in the market resulting in a large number of the firm's trading and financing counterparts pulling away from MF, dramatically reducing the firm's liquidity. That reduction in liquidity—a classic run on the bank—led MF Global to attempt to sell all or part of the firm in order to provide liquidity and protect the interests of our employees, shareholders, creditors, and customers. When those efforts failed, MF Global filed for bankruptcy on October 31st.

I know this Committee is interested in finding out what amount of segregated client funds went missing in the final days, how it happened, where those funds are, and what might eventually be returned to the firm's clients. I am deeply troubled by the fact that customer funds are missing, and I can assure you that I share your interest, and the public's interest, in finding out exactly what happened. At this time, however, I do not know the answers to those questions. They are being investigated by the trustees, who have taken over management of MF Global and have control over its records and accounts, and a host of regulatory and investigative agencies. While I do not know what they have found, I do know that all of the parties are working hard to find answers, and I hope they are able to get to the bottom of the issue as soon as possible.

Since the company filed for bankruptcy, I have focused every day on minimizing the effect on customers and employees. There is no way to turn back time and undo all of the damage caused by the collapse of MF Global, but in the last 6 weeks, I have worked day and night to reduce costs and maximize the remaining value in the business.

Because MF Global was a global firm, with operations on exchanges in more than 70 countries, there are separate entities with separate systems and books around the world, and I have worked to foster cooperation and communication among those entities. There are a number of different parties now responsible for unwinding the firm's operations, and it has been an enormous effort to coordinate with them to generate the maximum possible recovery of assets.

While it is only a small measure given the number of people who have lost their jobs, I am doing whatever I can to help former employees find new employment.

I believe it is important to examine the issues that led to MF Global's demise, and the firm has attempted to be as open and transparent as possible. I hope I can provide some assistance to the committee in its investigation today.

As I said, there is no way to undo the damage that has been done by MF Global's bankruptcy. But it is my hope that efforts such as this one to gather facts and provide a clear picture of what occurred will assist policymakers, regulators, and participants in the financial services industry in avoiding such tragic events in the future.

I look forward to answering your questions.

[The prepared statement of Mr. Abelow can be found on page 96 in the appendix.]

Chairwoman STABENOW. Thank you very much.

Mr. Steenkamp?

STATEMENT OF HENRI J. STEENKAMP, CHIEF FINANCIAL OFFICER, MF GLOBAL HOLDINGS LTD., NEW YORK, NEW YORK

Mr. STEENKAMP. Chairwoman Stabenow, Ranking Member Roberts, and distinguished members of the Committee, thank you for this 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 of this year.

Let me say at the outset that I am deeply saddened, upset, and frustrated that money belonging to MF Global Inc.'s customers has been frozen or is missing. 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 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 unfortunately have not been able to participate in the current efforts to find the missing funds.

While I am deeply distressed by the fact that customer monies have not yet been fully accounted for, I unfortunately have limited knowledge of the specific movement of funds at the U.S. broker-dealer subsidiary, MF Global Inc., during the last 2 or 3 hectic 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 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, to work closely with our investors and our 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. 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 acted as a futures commission merchant in the ordinary course of business. To avoid confusion, where it is 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 has 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 the 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 rating 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 24th, 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 week, the speed and severity of which were unprecedented in my experience and placed extraordinary pressure on the firm's liquidity.

As the situation deteriorated, the sale of the FCM business and/or the 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 night, 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 Committee is aware, the efforts to reconcile segregation calculation were not successful, and the deal fell through, and I along with others from MF Global promptly notified our regulators about the segregation issues.

I understand that the Committee, MFGI's customers, and the public have many unanswered questions about the customer funds. I share many of these questions, and I am personally extremely frustrated and distressed that they remain outstanding and that client funds are missing.

I would be pleased to answer the Committee's questions. Thank you.

[The prepared statement of Mr. Steenkamp can be found on page 151 in the appendix.]

Chairwoman STABENOW. Thank you very much.

First, for the information of the members, we will be breaking, understanding there is business that will be done at the caucus lunches, so we will break about 1 o'clock and come back at 2:15 to continue. We have much to do today, but we will take that opportunity to break.

First, Mr. Corzine and Mr. Steenkamp, on May 20, 2011, you both signed certificates required by Sarbanes-Oxley legislation assuring that MF Global's internal controls over financial reporting were accurate, and I have copies of that. And I am wondering, given what you know today and the \$1.2 billion potentially in customer funds that are missing, would you sign this document again? Mr. Corzine?

Mr. CORZINE. Senator, given what we know today, you would not sign that document because you would not have had the assurances of the people, the systems, the procedures verified by all of those that were responsible for internal confirmation that the data was accurate. And, clearly, as has been repeated, there is certainly some amount—\$1.2 billion or \$600 million, different numbers—of dollars that are unreconciled with regard to segregation accounts.

Chairwoman STABENOW. Mr. Steenkamp, would you sign this document again?

Mr. STEENKAMP. Senator, I think knowing what we know today, again, at this point in time, and knowing that there are missing customer funds from what we understand, I would not be able to sign that. But, you know, prior to this point, there were controls that, as far as I was aware, had not operated—that had not operated before this point in time.

Chairwoman STABENOW. You know, it is very difficult listening to the chief financial officer or the CEO or the COO indicating surprise that there were not adequate controls on the management of the money. I guess what we heard on the first panel was very simple. Where is the money? I mean, how do you answer that? Where is the money from funds that were supposed to be kept separate, customer money?

Mr. Steenkamp, as CFO, where is the money?

Mr. STEENKAMP. Senator, unfortunately, I do not know where the money is.

Chairwoman STABENOW. Well, who does?

Mr. STEENKAMP. Well, Senator, part of my job was not to approve transfers of client funds. It was not to be involved in the process of client funds. Those operational aspects occurred at MF Global Inc. as well as at all the other regulated entities around the world, and we had experienced senior officers executing those operational controls.

Chairwoman STABENOW. Mr. Corzine, where is the money?

Mr. CORZINE. Senator, enormous numbers of transactions were taking place in those very final days—I tried to put that in my statement—about the 38,000 customers, the many countries, and those need to be parsed through to arrive at an answer. We need

the facts on that. It is not only from those of us who do not see those records, but even from the people who now have those records, it is a very, very difficult task.

Many of us had reasons to believe when we signed statements like you presented that we had the people, the policies, and the procedures in place to give assurance. We would not have signed those on May 20th or other times while we were there if we did not feel those were secure. At the time that occurred on that Sunday evening, October 30th, it is clear that something was amiss, and that needs to be discovered what that was based through all of those transactions that I tried to outline.

Chairwoman STABENOW. Okay. And, Mr. Abelow, for you as well, where is the money? We are looking at the top three people of the company who are responsible for the overall internal controls of this company. And so, Mr. Abelow, where is the money?

Mr. ABELOW. Senator, as I said in my statement, I do not know where the money is. As of the filing of bankruptcy on October 31, investigations were commenced by a number of investigative authorities under the direction, presumably, of the SIPC trustee who has been put in place, and we have not had access to the results of that investigation or any information about the status of that investigation.

I am as anxious as you are to hear the results of that investigation and be able to answer the question.

Chairwoman STABENOW. Well, let me ask, did any of you authorize, approve, or know of money transfers from customer segregated accounts to the firm's broker-dealer accounts in the final days or weeks of MF Global or before then? Mr. Corzine?

Mr. CORZINE. Senator, as I said in my opening remarks, I never directed anyone at MF Global to misuse customer funds. I never intended to, and as far as I am concerned, I never gave instructions that anybody could misconstrue.

Chairwoman STABENOW. So you are saying you did not authorize, approve, or know of fund transfers?

Mr. CORZINE. Well, in a general sense, there are all kinds of fund transfers that are taking place. Anytime there is a sales of \$1.3 billion worth of commercial paper, there will be fund transfers associated—

Chairwoman STABENOW. I am talking about between broker-dealer accounts, though, and when we are looking at leading up—you know what I am asking in terms of the final weeks

Mr. CORZINE. That is why I am trying to be very direct in saying there is no direct authorization. I was not aware that the unreconciled accounts existed until that Sunday evening that we talked about.

Chairwoman STABENOW. Mr. Abelow, did you authorize, approve, or know of money transfers from customer segregated accounts to the firm's broker-dealer accounts in the final days or weeks of MF Global?

Mr. ABELOW. Senator, to the best of my recollection, I do not recall participating in any conversation about the use of customer funds, customer segregated funds or assets for any purpose other than what they were intended to be used for.

Chairwoman STABENOW. Mr. Steenkamp?

Mr. STEENKAMP. Senator, I did not authorize, approve, or know of any transfers of customer funds for any house or broker-dealer purposes.

Chairwoman STABENOW. Thank you very much.

Senator Roberts?

Senator ROBERTS. Well, thank you, Madam Chairwoman.

Mr. Abelow, as the COO, the employees responsible for executing transfers of money ultimately report to you and you report directly to Governor Corzine. Is that correct?

Mr. ABELOW. Senator, I am not sure if you—when you framed your question—if you could repeat it for me, I would appreciate it.

Senator ROBERTS. Well, let me put it another way. Do treasury operations and security operations ultimately report to you?

Mr. ABELOW. Yes, they did through a chain of authority.

Senator ROBERTS. All right. Mr. Steenkamp, as the CFO, did MF Global instill internal conduct controls for how and where money could be moved?

Mr. STEENKAMP. Yes, there were controls implemented in MF Global Inc. and all of our subsidiaries.

Senator ROBERTS. Is it possible for those conduct controls to be overruled?

Mr. STEENKAMP. To the best of my knowledge, these controls were operated and the approvals were resident in the legal entities. So I do not believe so, no.

Senator ROBERTS. You do not believe that. But is it possible?

Mr. STEENKAMP. I would not want to speculate, Senator.

Senator ROBERTS. Mr. Abelow and Governor, is it correct that at the end of each trading day MF Global, like other FCMs, would receive margin calls?

Mr. CORZINE. There was twice-a-day settlements of margin calls, if I am aware of how the process goes.

Senator ROBERTS. Mr. Abelow?

Mr. ABELOW. I believe it was typical that MF did receive margin calls.

Senator ROBERTS. Did MF Global receive margin calls or other requests for liquidity on Friday, October 28th? For both of you, Mr. Abelow and Mr. Corzine—I am sorry. Governor Corzine.

Mr. CORZINE. Senator Roberts, I believe there were margin calls, as there are on almost every day.

Senator ROBERTS. Well, you indicated publicly, I think, that \$4.5 billion went out the door.

Mr. CORZINE. I have repeatedly said that there was \$4.5 billion worth of U.S. Government agencies sold on that day. That was a sale that was designed actually to produce margin coming back to the firm as opposed to margin going out the firm.

Senator ROBERTS. We have heard a lot of 35-cent words being tossed around, something called “rehypothecation.” That is a big word even here in Washington, not to mention Dodge City. We may not understand the ins and outs of it, but two things we do understand are margin calls and chain of command. We know customer money was accounted for on Wednesday, the 26th. Friday, the 28th, the firm’s cash flow situation was dire, and the demands for cash kept coming in.

Mr. Abelow and Governor, is it the case that MF Global did not have enough cash on hand to cover the cash needs that came in late Friday?

Mr. CORZINE. Senator, from all reports that I had received, to my recollection, on that day we were able to meet our cash demands.

Senator ROBERTS. Mr. Abelow?

Mr. ABELOW. I do not recall being made aware of our running out of cash on Friday, the 28th, of being unable to meet obligations.

Senator ROBERTS. As a captain in the Marines—and, Governor, you were in the Marines—I knew that if a full-bird colonel told me to do something, I would probably do it. Now, if a two-star general gave me an order, I sure would not ask any questions. So could it be possible that one or more of your operational money movers who reported to you, Mr. Abelow, and you, Governor, was told to cover the liquidity needs or margin calls overwhelming the firm's cash flow by taking money out of the segregated customer accounts? Governor?

Mr. CORZINE. Senator, I do not believe that anyone would operate that way. We had no experience in the 19 months that I had been there that anyone had overridden those systems. And so I have no reason to believe that occurred in those last hours.

Senator ROBERTS. Mr. Abelow?

Mr. ABELOW. Senator, I cannot speculate about conversations that I did not see or participate in. I can only tell you that I do not recall participating in any conversation about a use of customer funds or customer assets other than for their intended purposes.

Senator ROBERTS. As I stated in my opening remarks, the CME knew on or before Wednesday, November 2, that MF Global was attempting to hide something. In fact, didn't MF Global leadership even go so far as to request and receive an actual plan that would break the glass and tap into your customer segregated accounts, perhaps described as a loan, if such a scenario arose?

Mr. CORZINE. Senator, there certainly were contingency plans that I think fall under the rubric that you were talking about, break the glass. To my knowledge and understanding of that report, it was not ever the intent to recommend tapping into segregated customer funds.

Senator ROBERTS. Mr. Abelow?

Mr. ABELOW. Senator, I have not reviewed the specific document that you are referencing, but my recollection is that the key driver of liquidity, source of liquidity under that scenario, was the use of a revolving credit facility.

Senator ROBERTS. You might want to take a look at it.

By all accounts, on the Friday before bankruptcy, MF Global thought it had found a buyer to save you. It seems well within the realm of possibility that, as you put it, Mr. Abelow, a classic run on the bank overwhelmed your cash flow, and an executive could have communicated somehow an order to use your customer segregated funds to cover the firm's liquidity crunch, thinking that, of course, by Monday morning everything would be fine, the company would be bought out, an infusion of money from the new owner could replace the missing customer funds.

Is this plausible? Governor?

Mr. CORZINE. Senator, as in a number of the questions, I think I am being asked to speculate—and I really do not—I do not really think I should speculate. I had no reason to believe until the evening of October 30th that there was a misuse of customer funds.

Senator ROBERTS. Mr. Abelow?

Mr. ABELOW. Senator, I was shocked to be informed on Sunday that there was a—

Senator ROBERTS. But is this plausible?

Mr. ABELOW. —potential shortfall in customer funds. I cannot speculate beyond that, sir.

Senator ROBERTS. Well, if this is not what happened, then what did happen? What is your speculation on that?

Mr. CORZINE. Senator, I think speculating is—should be done in the context of the facts that are being developed by the investigators. As in my oral statement and also in my written statement, I have put forward issues about whether money was returned properly that should be looked at. I put forward transactions that I think would be obvious that people should check all the details on. But how I would come to conclusion without records, without the ability to go through it, is speculative and I think would be inappropriate and could be misleading.

Senator ROBERTS. Madam Chairman, I am over time, but I would like Mr. Abelow to respond. What did happen?

Chairwoman STABENOW. I would ask you to respond briefly in this round.

Mr. ABELOW. Senator, I do not know what happened, and I am awaiting the results of the investigation to inform all of us.

Senator ROBERTS. Thank you, Madam Chairwoman. I have additional questions. We will ask those on the second round.

Chairwoman STABENOW. We will absolutely have a second round, yes.

Senator Conrad?

Senator CONRAD. Thank you, Madam Chairman.

You know, as this has unfolded, I have had contacts from my home State, several customers, several broker-dealers, one missing half a million dollars, and absolutely through no fault of their own. And as one tries to kind of pierce the veil here and figure out what happened, it is incredibly difficult to do.

I had a chance to read the lengthy article in the New York Times which has some interesting tidbits in it. One is that—I have operated under the assumption that these European trades on European debt were losing money. The assertion in this article is that they made money. The second paragraph from the end, “Ultimately, the bets Corzine placed wound up better than the firm itself. The European debt trades were profitable, though too late for MF Global.”

Is that the case, Governor Corzine? Were they profitable trades?

Mr. CORZINE. Senator, at the time of the bankruptcy on October 30th, they were still positive trades, positive positions, but they clearly were a part of the ingredients that led to the loss of confidence in the firm. So there are really two different issues. I think Mr. Abelow talked about, as I think I did in my written testimony, the ingredients that led to that loss of confidence, and the foreign sovereign positions are certainly part of that process.

Senator CONRAD. Well, that really comports with this article. Basically this article says there was a loss of confidence. The Moody's downgrade was devastating because that affected the firm's liquidity. You have indicated there were margin calls, but that was not atypical that you would have margin calls in a firm like this. But was the level of margin call unusual at the end of that week? That is, were the demands on the company for cash at the end of that week extraordinary?

Mr. CORZINE. Senator, to the best of my recollection, there were increasing demands for margin in different places. The process slowed up in the clearing and movement of transactions, but specifics, I would really want to rely on being able to look at records to be able to answer with precision.

Senator CONRAD. This article, by the way, suggests that the day after the bankruptcy, you, Mr. Corzine, sifted through transactions in the hope of locating the missing money. Is that the case?

Mr. CORZINE. Senator, to the best of my recall, I sat with a group of internal folks who might be able to give me the kind of information that I think you would like to get from me today to see if we would be able to identify some sources of where these missing funds might be.

Senator CONRAD. Is it possible—

Mr. CORZINE. I was stunned, and the first of my knowledge of segregated funds being out of reconciliation was that evening, on the 30th.

Senator CONRAD. Because you believed that the funds were where they were supposed to be. But they were not. So something has happened here. I mean, I have heard speculation from people who are deeply knowledgeable in this area that money was transferred that came from client accounts by somebody's authority with the idea that those funds would be made whole the following week because the company was owed money that would normally come to it in the normal course of business, and, of course, when everything went south, funds did not transfer money to MF Global that were really due MF Global.

Do you think it is possible at the end of the day that there will be a finding that, in fact, MF Global is owed money that will cover the shortfall here?

Mr. CORZINE. Senator, I would respond the way I did to Senator Roberts. I think it would be speculative on my account to opine about that. As I said in my written and oral statements, those are possibilities, but without having the ability—probably not even by myself, but by experts—to go through some of that, which is exactly what the trustee and other investigators are doing, it would be virtually impossible to speculate.

Senator CONRAD. Well, at the end of the day, what we know is customers are out funds that are due them. You have all expressed your regret at that and your sympathy for those who have been adversely affected and came across as sincere to me. But somehow customer funds were transferred in a way that is inappropriate. And in searching your memory now, is there any conversation that you were part of that could have been misinterpreted by someone to authorize the transfer of customer funds to cover margin calls or for any other purpose that was not appropriate?

Mr. CORZINE. Senator, I specifically put in my opening statement, because I want to be very clear on it, I never authorized the misuse of customer funds, I did not intend to authorize the misuse of customer funds, and I do not believe that it would be possible to construe anything that I said as an authorization.

Senator CONRAD. So searching your memory, Mr. Abelow, anything that—any conversation you were part of, any conversation you know about, any conversation where it could be misconstrued, what you said, that would have led somebody to believe they should transfer customer funds?

Mr. ABELOW. Senator, I do not recall participating in any conversation about the use of segregated funds other than for their intended purposes.

Senator CONRAD. You know, in searching your memory, there is—you know, you were in a chaotic crisis situation. You do not remember a conversation where somebody comes and said, “Hey, we could transfer funds from customer accounts and cover these when we get the money back on Monday, anyway”?

Mr. ABELOW. Senator, I do not recall any conversation about customer funds being used for anything other than their intended purposes.

Senator CONRAD. All right.

Chairwoman STABENOW. Thank you very much.

Senator LUGAR?

Senator LUGAR. Thank you, Madam Chairman.

We have heard, at least according to my notes, that there were as many as 38,000 customers of MF Global, and we discussed with the previous panel, who were some of the customers of MF Global, or through affiliates were, why they retained this affiliation. I am simply curious, because we have heard at least some testimony that in April or May there already were hints, perhaps because of European bond transactions or other investments of MF Global, of anxiety on the part of rating agencies. But, in any event, before this crucial weekend in October, an actual declaration, apparently, of a downgrade in earnings of the firm.

Our concentration today obviously has been on the customers. Many are our constituents who, for the time being, had the segregated funds and do not have the money. I raised with the previous panel sort of the business judgments which led people to want to be affiliated and a customer with your firm.

Was there no early warning that might have led some of them to decide to do business with somebody else? It appears to me that throughout this period of time there was a considerable degree of anxiety in the financial markets about all of this.

You have testified, Governor Corzine, that the actual European bond transactions at the time of the final bankruptcy were doing better than some of the other things that you had there, but that surely must not have been true throughout the entirety of the year. That was your business to try to determine how you were going to make money for MF Global. But I am just curious. Was any of this transparent? Would any of the 38,000 customers have some idea about your portfolio, your transactions, your movement toward a loss of earnings? Was this entirely opaque as far as customers?

Mr. CORZINE. Well, Senator, I really would not be able to tell you what kind of credit work an individual customer would do or any particular customer. But most of our introducing brokers—I think you heard from one this morning, and there were many—it was not unique with Advanced—who represented and introduced clients to us, certainly they would have the capacity to read a 10-K or a 10-Q, the public filings, certainly they would have the ability to review credit rating agency comments. And as you know, probably know, most public companies, ourselves included, had quarterly presentations of our earnings—not earnings in our case, I guess our results, and those were open to general distribution and understanding of what we best understood at the point in time existed. And those are pieces of information that are in the public forum on a regular basis that certainly sophisticated investors and counterparties look to.

Senator LUGAR. Well, many sophisticated investors must have come to a conclusion that continuing on with MF Global was not a very good idea for themselves or for their customers. But perhaps they said even if MF Global goes into bankruptcy, still our segregated accounts will be safe, that is simply the law of the land and is almost bound to occur. In other words, I am just trying to gauge how we reached the situation in which we still had the 38,000 customers and we still had the farmers who were hoping to hedge and so forth tied up here, because clearly the distress today is the overall picture, but specifically with people who felt that somehow the law simply would not permit this loss, regardless of what happened to you and the management of MF Global.

Now, you are saying essentially all these records were there, regular quarterly reports and various other reports, so that you were not hiding any transparency of the risks that were involved in these kinds of investments, if I hear you correctly. Is that your assumption?

Mr. CORZINE. My assumption, Senator, is that we were complying with the disclosure requirements, and those are reviewed by outside auditors, and they were certainly reviewed, I would presume, by the credit rating agencies.

Senator LUGAR. So if I were a broker that was guiding customers, farmers, and what have you, in MF Global, I must have been a company that really thought there was going to be some excitement in terms of the European bond market, and this was going to be a money maker, presumably, or certainly not a disaster. But I do not know anybody, reading through those markets through the last few months, that would have that degree of confidence, and the thought that you were so heavily involved in it would have led me to a lot of lack of confidence, the other way around. In other words, sort of in the afterthought, I am not certain why you made these investments or why MF Global was so managed but, likewise, how the other people were managed who were dealing with you and why they continued with you.

Now, this may be beyond your comprehension likewise, although you probably valued having these customers and figured they might stick with you because they did not know any better or they were speculating along with you, and it turned out the speculation was wrong. But at the end of the day, I suppose we are at a point—

does the Federal Government now have sufficient controls, regulations, and so forth on MF Global and firms like this or anybody else so that the regular farmer who is trying to hedge and sell and so forth is not out of pocket and at least has some security? Or maybe this is unobtainable. I am hopeful our hearings really lead to a situation where we think of what kind of legislation or what kind of administrative fixes are required really to remedy the situation.

Thank you, Madam Chairman.

Chairwoman STABENOW. Thank you very much.

Just to let the members know, we will turn to Senator Klobuchar now, and then Senator Chambliss, and then we will break until 2:15. Senator Klobuchar?

Senator KLOBUCHAR. Thank you very much, Chairman Stabenow. Thank you all for being here.

Thank you to Mr. Tofteland I was not here for the end of your testimony—for your work from Luverne, Minnesota.

Mr. Corzine, it is being widely speculated that in the days before MF Global declared bankruptcy, your firm shifted funds from segregated accounts to the broker-dealer side of the business. In his testimony before the House last week and in his written testimony for today's hearing, Mr. Terrence Duffy, the executive chairman of CME Group, asserts that at about 2:00 a.m. on Monday, October 31st, MF Global informed the CFTC and CME that customer money had, in fact, been transferred out of segregation to the firm's broker-dealer account. Do these details match your recollection of what was conveyed to the CFTC and CME early that Monday morning?

Mr. CORZINE. Senator, the general description that Mr. Duffy talked about on the issues of October 31st are consistent.

Senator KLOBUCHAR. Okay. To your knowledge, did MF Global shift any funds out of the segregated accounts to the broker-dealer side of your business or to pay any outstanding obligations?

Mr. CORZINE. Senator, as I have said in written testimony and here again this morning, until the evening—late evening, actually—of October 30th, I was not aware of this unreconciled amount in the segregated accounts.

Senator KLOBUCHAR. Okay. Mr. Corzine, none of the foreign debt securities that MF Global used to engage in the repo-to-maturity transactions have defaulted. By your own admission, these positions played a major role in the loss of market confidence that led to the failure of the firm. In exploring the role these trades played in the collapse of MF Global, many have raised concerns over the accounting rules that allowed you to treat RTM positions in foreign sovereign debt as sales rather than financings, effectively removing them from the balance sheet.

You said in your testimony that these positions were publicly disclosed but not on your balance sheet. Is that right?

Mr. CORZINE. That is correct, Senator.

Senator KLOBUCHAR. And do you believe that we should re-examine the accounting treatment of repo-to-maturity transactions?

Mr. CORZINE. Well, to the extent that people believe that the disclosures that we made were not adequate, and they believe that more disclosure is better, that certainly should be considered. I

think I am probably not the one to speak to this. The issue of—I am certainly not an accounting expert. The issues of off-balance-sheet questions are very challenging for those who make rules in accounting, the accounting rules. And this is one of those that I think should be reviewed as should all—

Senator KLOBUCHAR. It just seems that more transparency here would have been a good thing, and we are always hearing about, no, this will hurt if we do this, if we do that. And in this case, you had something that was somewhere off in a footnote where I do not think Mr. Tofteland of Luverne could have found it. And so I am just trying to figure out how we make this better going forward in addition to finding this money.

Mr. CORZINE. It was in the 10-Ks, the disclosure with regard to this. It was discussed with analysts and, if my memory serves me correctly, is in some of the credit write ups from the rating agencies.

Senator KLOBUCHAR. Okay. Mr. Abelow, the role and responsibility of the COO can vary dramatically between businesses, so could you discuss for us your role at MF Global and who to your knowledge, to get to the specifics, had the authority at MF Global to move funds from segregated accounts?

Mr. ABELOW. Yes, Senator. My role as chief operating officer and president were to oversee the daily execution of the firm's strategy, to focus on various elements of the firm's strategic plan, and I had oversight responsibilities for a number of operating areas of the firm.

I am sorry. As to the second part of your question—

Senator KLOBUCHAR. Who had the authority at the firm to move funds from the segregated accounts? I think it is a theme you are hearing here. We are trying to figure out where did the money go.

Mr. ABELOW. My apologies.

Senator KLOBUCHAR. No one seems to know.

Mr. ABELOW. And, again, Senator, I am not aware of any conversations about the movement of segregated funds other than for their intended purposes, and a number of people inside the firm—in operations, in treasury, in compliance, and other areas—were involved in the daily movement of funds on a regular basis.

Senator KLOBUCHAR. Well, in the days leading up to Sunday when it was discovered that the funds were missing, were you involved in discussions about actions being taken to ensure that your FCM business did not become under-segregated?

Mr. ABELOW. I do not recall specific conversations about actions for it to not become under-segregated. I do not recall a specific conversation about that.

Senator KLOBUCHAR. Okay. Mr. Steenkamp, I am assuming when you heard there was a shortfall in the funds, as CFO you immediately went looking for answers. What did you find?

Mr. STEENKAMP. Senator, the first time I found out about the segregation was on the Sunday, and we found out pretty late on the Sunday night. I was informed that there is an issue with the segregation calculation, that the assets are less than the liabilities. And as I mentioned in my statement, following that we informed the regulators very shortly thereafter. My initial reaction was absolute shock. As far as I am aware, we had never had issues with

segregation in the past, and it was something that was completely unexpected.

Senator KLOBUCHAR. And so then what did you do? You went to try to find the money?

Mr. STEENKAMP. Well, it was late Sunday evening, and so at that point we were about to execute the deal for an acquisition of part of the firm. My first response was once we had taken a short while to see if we could try and reconcile it before our deadline late Sunday night, once we knew that we would not find an answer this evening, we notified the regulators.

Senator KLOBUCHAR. Very good. And did you see the testimony of Mr. Duffy with CME and what he was saying about the timing? I can read it to you again if you would like, where he said at about 2:00 a.m. on Monday, October 31st, MF Global informed the CFTC and CME that customer money had, in fact, been transferred out of segregation to the firm's broker-dealer account. And so is that your recollection of the timing of this?

Mr. STEENKAMP. Yes, from my recollection, it was very, very early Monday morning when we were on the phone with the regulators. That sounds consistent.

Senator KLOBUCHAR. All right. Thank you very much.

Chairwoman STABENOW. Thank you.

Senator Chambliss?

Senator CHAMBLISS. Thanks very much, Madam Chair.

I have listened to your answers very carefully, and I want to make sure that I get a direct answer to this.

Governor Corzine, did you understand that MF Global was using customer funds to carry out proprietary transactions on behalf of MF Global?

Mr. CORZINE. Senator, I was not aware of the misuse of customer funds, and I have said that, certainly did not authorize it, did not intend to have it happen, and until that Sunday evening, was not aware of it.

Senator CHAMBLISS. I understand that is what you said earlier, but my question is—well, let me frame it a little differently. Would the use of your customers' funds to engage in proprietary trades on behalf of MF Global have been illegal, as far as you are concerned?

Mr. CORZINE. Well, first of all, it is actually more complicated. It gets into this Rule 1.25 and the repurchase agreements between entities. As long as the securities that were a part of that repurchase agreement between the entities, that would be appropriate. It would not be a misuse of customer funds.

For instance, if you had treasury bills and you did a repo to the FCM from the broker-dealer, that would be appropriate. If you did it for euro sovereigns, that would not be.

Senator CHAMBLISS. Okay. And that is a generally accepted practice in the industry, is it not, to—

Mr. CORZINE. The Rule 1.25, which I think I heard Senator Harkin actually read from, is very specific about what can be invested with segregated funds, and any of the repurchase agreements that could occur between the entities have to be in 1.25-eligible securities. They cannot be in things that did not already meet that criteria.

Senator CHAMBLISS. Okay. But you knew customer funds were being used for that type of activity.

Mr. CORZINE. For Rule 1.25-eligible—

Senator CHAMBLISS. Right, yes. You know customer funds were being used for—

Mr. CORZINE. That—yes.

Senator CHAMBLISS. —what you thought was a correct use—

Mr. CORZINE. Correct use.

Senator CHAMBLISS. —of investing customer funds.

So were you aware that margin calls were being made on a regular basis just prior to—or towards the middle or the end of October on the sovereign debt investments?

Mr. CORZINE. The sovereign debt investments are in the broker-dealer and were not a part of the FCM. And the answer to your question is yes.

Senator CHAMBLISS. So where did you think the money came from?

Mr. CORZINE. We run liquidity positions, and as I think I heard Mr. Abelow say, we also had access to draws against our liquidity lines with the banks.

Senator CHAMBLISS. Okay. Mr. Steenkamp, you as the CFO, I assume, review the financial condition of the company on a regular and daily basis?

Mr. STEENKAMP. As CFO of the Global Holding Company, I would review the consolidated financial statements and financial condition. And I think as I mentioned in my statement, we have various regulated subsidiaries around the world that have various rules and regulations under the specific jurisdictions that they operate in. And with regards to the financial condition and operations of those entities, I would receive exception reporting and escalation notification as issues arose from the finance and other offices in those entities.

Senator CHAMBLISS. So were you aware within the, let us say, 2 weeks leading up to October 31 that regular margin calls were being made against one of the subsidiaries for the foreign debt investments?

Mr. STEENKAMP. Senator, I was aware on occasions that there were margin calls made as variation margin, and at times initial margin changes occurred related to those positions.

Senator CHAMBLISS. Okay. And as the chief financial officer of the company, where did you think the money was coming from to meet those margin calls?

Mr. STEENKAMP. Well, Senator, as a global firm, we had some house money that we had raised over time that we could use for liquidity, and in addition, we also drew down, as Mr. Abelow and Mr. Corzine mentioned, on the revolving credit facility, which was a liquidity facility available to us to meet liquidity needs as they arose.

Senator CHAMBLISS. And did you not check to see where the significant dollar amount of margin calls was actually coming from, what account?

Mr. STEENKAMP. Senator, I would not have checked the exact account that it would be coming from, but with regards to clients, you know, whether it would be coming from the client side, there were

controls, for example, back-end controls being individual segregation calculations, that had never indicated any issues. So there was no indication for me that it would be coming from client accounts.

Senator CHAMBLISS. Okay. Governor Corzine, if I understand it correctly, in order to reach into a customer's account and to meet the margin calls on the sovereign debt investments, you would have to actually go out of one company into another company?

Mr. CORZINE. Well, Senator, you would not meet margin calls for our broker-dealer by reaching into the FCM customer funds.

Senator CHAMBLISS. Well, then, my question is: How did that happen? How did somebody reach into the segregated accounts and transfer money out of those to do something with it that they should not have done?

Mr. CORZINE. Senator, I do not want to repeat, and I know that it is frustrating but it would be speculative on my part to say that. I did lay out some flows of transactions and kinds of occurrences that need to be established by the facts of looking through all of these records, and that is what I think the trustee and the other investigators are now doing.

Senator CHAMBLISS. So is that kind of the guts of where we are with MF Global right now, is trying to figure out who transferred the money and who authorized the transfer of that money out of the segregated accounts?

Mr. CORZINE. I think it is now in the fact discovery stage of where the flows of money took place, and when those then are established, then you can follow that back to, I presume, how it was authorized.

Senator CHAMBLISS. Madam Chair, I know I am over my time, but since I am last, can I ask one more question that I think will generate a quick answer.

Chairwoman STABENOW. Please proceed.

Senator CHAMBLISS. So am I to understand—and I would like all three of you to answer this—did any of you know that this money was being transferred out of the segregated accounts?

Mr. CORZINE. Senator, as I said in all of my testimony, until that Sunday evening I was not aware that there was a misuse of customer funds.

Senator CHAMBLISS. Mr. Abelow?

Mr. ABELOW. Senator, I as well was shocked to learn on Sunday that we had the potential deficit in our segregated funds.

Senator CHAMBLISS. Mr. Steenkamp?

Mr. STEENKAMP. Senator, I had no knowledge that customer funds were transferred into the broker-dealer until that Sunday evening when we were notified.

Senator CHAMBLISS. Thank you.

Chairwoman STABENOW. Thank you very much. We will reconvene at 1:15. I will indicate that we are going to do the third panel. We know this is a long day, but this is a very, very important subject, and we appreciate all of you remaining with us.

With that, the Committee stands in recess until 2:15.

[Whereupon, at 1:00 p.m., the Committee recessed, to reconvene at 2:15 p.m., this same day.]

AFTERNOON SESSION [2:24 p.m.]

Chairwoman STABENOW. The Committee will come to order. We thank you very much for continuing with us here in this very, very important time and hearing, and we will now turn to Senator Bennet for his questioning.

Senator BENNET. Thank you, Madam Chair. Thank you for this holding, and thank you to the witnesses for being here today.

At the risk of eliciting an answer we have had already, which is not going to help anybody here, I wanted to try to ask it this way: The testimony, Governor and gentlemen, has been that the controls were set up to segregate the funds and that you certified to such—I am sorry for putting words in your mouth, but in the interest of time—that nobody ever—none of the people on this panel ever authorized any misuse of that money or that it should not be segregated. Yet between \$600 million and \$1.2 billion is somewhere missing.

Is the impression that we should take that if somebody had checked 10 days before this happened that there would not have been commingling and that something happened during the weekend of all of that stress that may have resulted in this? Is that an impression we are supposed to have here?

Mr. CORZINE. Senator, I will take a first run at it. I think each of us have different perspectives.

If that had been the case 10 days before, under the policies and procedures it would have been raised certainly to, I think, each of our offices, unless it was a minor—and \$600 million is not minor, \$100 million would not be minor—element with regard to segregated funds. And that was not the case, and we have to report every day, I think both to the CFTC and the CME. So that would, I think, deal with the first part of your question.

The second, I think you are going to hear speculation again on the multiplicity of transactions in accounts, at least that is what you will hear from me because I would not know what those transactions were, would have expected at the end of the day, if there was unreconciled segregated accounts, that it would get raised up again.

Senator BENNET. Do either of you have anything you would like to add?

Governor, just on that point, your testimony at the beginning of the hearing, as I understood it, was that some of the final trades that were made, the firm or your still have not seen the settlement, that we do not know at what price or how they were recorded? Or did I misunderstand what you were saying?

Mr. CORZINE. Senator, the prices were set. I do not recall those prices. I do not have records of them. But the particular transactions that I cited in my oral testimony—I think there are actually some more cited in my written—were the \$1.3 billion commercial paper, which was a transaction that was done for immediate settlement, cash settlement on Thursday, and then there were \$4.5 billion worth of Federal Government agencies that were transacted for cash or immediate settlement on Friday. The prices of those are in the books and records, and while I do not know the ultimate disposition of those, they certainly are places one might want to check.

Senator BENNET. Right. So I guess the point is that we do not ultimately—we do not yet know what the proceeds of some of those transactions were. Is that—

Mr. CORZINE. We had anticipations of what those proceeds would be based on the prices the securities were transacted at.

Senator BENNET. Thank you. I wanted to shift gears a little bit and ask a question that was raised in both the New York Times and the Wall Street Journal, who reported that MF Global's former chief risk officer, Michael Roseman, sought to warn the company and its board about the firm's growing exposure to European sovereign debt, and the suggestion in the articles is that in January of this year, the firm let Mr. Roseman know that he was being replaced as the chief risk officer.

Could you discuss from your point of view how the firm's audit committee process addressed concerns that its chief risk officer raised? And looking back on this, how would you have improved, if you feel it needed improvement, internal processes when you received these types of warnings from somebody like your chief risk officer?

Mr. CORZINE. Senator, the context and open discussion that Mr. Roseman had with the board—and I presume the audit committee, although I do not have my calendars to confirm that; we encouraged people to be able to speak their minds— was in the context of asking for increased limits roughly this time a year ago, maybe in December. Again, without records, I cannot be precise with regard to those recollections. And there were full discussions with the board about the point of view that he would have expressed, and that was in the context of not just sovereigns but exposures that we had to those countries with clients that were involved in the limit structure, as well as investments that we might have in other parts of the global operations.

Senator BENNET. A judgment is a judgment, but that is not what I am trying to litigate here. I just wonder whether, for the benefit of our oversight, there were other processes that could have been put in place or—just with the benefit of hindsight.

Mr. CORZINE. Well, clearly with the benefit of hindsight, there would not have been as much long-term reflection on the firm that came to pass in October if there were no euro sovereign positions. I am not trying to deny reality. On the other hand, first of all, the situation was entirely different from the perspective of the world certainly a year ago than it was at the end of October. And we encouraged the kind of discussion and debate at the board level, and it was my view that I should advocate for what I thought, based on the best analysis that I could make of what was the right direction for the firm to take on these issues that were different than Mr. Roseman's views.

Senator BENNET. Thank you. I am out of time, but I appreciate your responding to the questions, and, Madam Chair, thanks again for holding this hearing.

Chairwoman STABENOW. Thank you very much.

Senator JOHANNIS?

Senator JOHANNIS. Madam Chair, let me also say thanks for holding the hearing. It has been very informative.

Mr. Steenkamp, let me start with you. You have been sitting through the testimony not called upon very much. You have heard the other two gentlemen testify. Is there anything in their testimony that you consider not accurate, first of all?

Mr. STEENKAMP. Senator, it is tough to recollect and comment on every single comment made here, but I would say in general it is accurate with my recollections of events as described, albeit, as I mentioned, I only became CFO in April of this year and so some of the events, you know, did precede that.

Senator JOHANNIS. Is there anything about their testimony that you feel is not a full disclosure and you feel a need to tell the Committee more fully what happened?

Mr. STEENKAMP. Nothing I guess specific to the best of my ability jumps out at the moment.

Senator JOHANNIS. Mr. Steenkamp, I was reviewing your bio in preparation for this hearing: post-graduate honors in finance, bachelor's degree. Were you top of your class?

Mr. STEENKAMP. I believe I was in the top three of my class.

Senator JOHANNIS. Suffice it to say you are a very bright guy. You started your career in audit practice. You assisted clients in the SEC registration process, listing on exchanges in the United States. We would all stipulate that is enormously complex work, work that most people could not perform. You were vice president of external reporting and accounting policy. You were senior vice president, chief accounting officer, global controller—a remarkable resume. Wouldn't you agree with me?

Mr. STEENKAMP. Well, I guess that is not for me to judge.

Senator JOHANNIS. What was your compensation package when you joined MF Global?

Mr. STEENKAMP. Off the top of my head—and I do not have that information with me—I believe my starting salary was somewhere in the region of 200 or 250.

Senator JOHANNIS. And I am assuming there were options or bonuses that plussed that up. Would that be correct?

Mr. STEENKAMP. No. When I joined the firm, it was not yet a public company.

Senator JOHANNIS. Okay. Last year, what was your compensation?

Mr. STEENKAMP. Again, off the top of my head, I believe my salary as of April when I became CFO was set at \$500,000, and it is all public record.

Senator JOHANNIS. Now, during the time that you were there, did you keep a diary or take notes during these meetings or e-mail?

Mr. STEENKAMP. Generally in meetings I do not take copious notes although I do at times have notes that are on presentations or various materials if we are in a meeting and we are going through something specific with an agenda. But I would not say I have a standard way of doing it.

Senator JOHANNIS. Have you turned those notes or documents over to the Committee?

Mr. STEENKAMP. I am not sure what from a legal perspective has been turned over or not. I know that we have, you know, followed—the firm has ownership of all my work materials.

Senator JOHANNNS. Now, my understanding is that there would be separate accounts or a separate account maintained for consumer funds, segregated accounts. Is that correct?

Mr. STEENKAMP. It obviously differs depending upon which jurisdiction you are in, so, you know, each regulated entity, as I mentioned earlier in my statement, had very unique rules and regulations that governed how every facet of the business is run.

With regards to MF Global Inc., there are segregated bank accounts, I believe, that are held. As I mentioned earlier, though, similar to all of the entities, this is managed by those senior officers in those entities from an operational perspective.

Senator JOHANNNS. Right. So you have got those separate accounts, all the poor people that were here that have been beat up by MF Global, thought they had their money in segregated accounts. How would that money—who had authority to say take money out of this account and put it at risk for whatever investment? Who in the organization by name would sign off on that? Would you sign off on that?

Mr. STEENKAMP. No, I would not sign off on client transfers.

Senator JOHANNNS. When did you first learn of that?

Mr. STEENKAMP. The first time I learned of it was on the Sunday, and as I mentioned, you know, as far as I am aware, we had never had any issues with segregation—any segregation issues of client balances. And so it came as an absolute shock to us that there would actually be an issue. These are also—this is also a process and controls that have been reviewed and assessed over many years by our regulators and our auditors, and at not point that I am aware of had there ever been any issues with regards to it.

Senator JOHANNNS. Now, having been the head of a very large organization myself, when I would have learned of something like that, I would have asked a question like: “Who was the fool who did that?” Did you ask that kind of question?

Mr. STEENKAMP. So, Senator, as you know, during those couple of days and the weekend, we were working around the clock on numerous different things. When we found out about it and were notified that there is an issue with the segregated monies, it was late on Sunday evening. At that point we—you know, it is such a shock that there might be an issue with it. The original thought was it has just got to be a reconciliation issue. And so we had a group immediately try and just reconcile the segregation calculation. The calculation is not actually, you know, bank accounts in that it is an actual calculation which is very complex in nature and involves a lot of people which then determines whether assets exceed liabilities. We immediately had a team, a SWAT team, spend time on the calculation and try and see where the reconciliation was. That went on for a couple hours. And then it was, you know, at that point in time, not being able to resolve the segregation issue, we had to let the buyers as part of the acquisition know and inform the regulators immediately.

Senator JOHANNNS. Madam Chair, I have run out of time, but I will stick around for the second round.

Chairwoman STABENOW. Thank you very much.

Senator Nelson?

Senator NELSON. Thank you, Madam Chair, for holding this hearing. I am going to read just a couple of lines from letters that I have gotten from Nebraskans.

"I operate a grain business in Nebraska, and part of my business is buying and selling grains from farmers that I hedge in the futures markets, principally at CME. Recently, a major FCM whom we use, MF Global, filed for bankruptcy." It goes on to say, "How am I going to get my money back?"

Another one: "Dear Senator Nelson: I am an attorney in Nebraska. I represent a number of people and entities who have commodity trading accounts associated with MF Global." It goes on to talk about the money not being available. "When will it come back?"

Another one who says, "My farm hedging account has been going through MF Global. When I heard that they were downgraded to junk, I asked for my \$75,000 from my excess margin accounts. I received a check, deposited it, and then it was returned. In the meantime, they declared bankruptcy. Now I have a worthless check, and my account balance is short by \$75,000."

I am sure that you have all heard similar sad stories of this kind. You are aware of what the consequences are for people if they are short on their accounts that they thought were secure, not expecting to have them have any—those accounts have any risk other than what market risk they were taking, but they did not expect to have a disappearance risk.

So when your team took over, the company was largely a brokerage firm, did not regulate trade in sovereign debt for its own profit, and at least not in the manner that ultimately you did.

I guess my first question is: Why did you feel the need to enter into large trading positions that the company had previously never taken? And do you think that trading the firm's capital in this manner was appropriate and expected by shareholders? We are not talking about account holders. We are talking about shareholders in the first case.

Mr. CORZINE. Senator, just for a matter of clarification, we run a very—we ran a very global organization with one of our largest centers of operations in London which was an active participant in the euro sovereign markets before—maybe not before Mr. Steenkamp, but before I joined, and my colleague. In fact, I think in my written testimony I talked about there were positions larger than actually we ended up having. Now, they were not in the repo-maturity category, which we had actually had longstanding positions in our U.S. subsidiary with regard to U.S. treasuries, U.S. agencies, and U.S. corporate securities.

The genesis of this transaction was our examining as a firm ideas that we thought were applicable, appropriate, prudent, and I became convinced and became the primary advocate of these positions. I do not want to dislodge any responsibility on that, but it was consistent with kinds of transactions we had taken on at other periods of time.

I will repeat, though, these were in our broker-dealer operations, not in our FCM.

Senator NELSON. Right. Now, Mr. Steenkamp, you have some knowledge, as you have indicated, of what the internal controls

were. Were the internal controls adequate to deal with the transactions that were undertaken previously and most currently?

Mr. STEENKAMP. Well, Senator, the controls are obviously across various functions. As global—

Senator NELSON. Excuse me. For each function, do you think the controls were adequate to deal with each different kind of transaction?

Mr. STEENKAMP. Senator, that is very broad in the sense that you would always in any organization have controls that there are deficiencies or items that come up from internal audit's reviews and other auditors, et cetera, that you then work on and you improve.

I think, you know, with regards to the controls specific to the customer money—that is, within MF Global Inc., as I had mentioned—those controls had never in the past indicated any issue with regards to that, despite going through numerous reviews from the external and internal—

Senator NELSON. Well, wouldn't you think—excuse me. Wouldn't you think that controls like that would be adequate to at least set off an alarm if somebody was now taking money out of those accounts? Not out of the company's accounts but out of those account holders' accounts?

Mr. STEENKAMP. Well, sort of the control that we had relied on as a back-end control was the segregation calculation.

Senator NELSON. Yes.

Mr. STEENKAMP. Which normally was prepared on a Monday with regards to the Friday and provided to the regulators. That was a calculation which, you know, was escalated to me as we discussed with the other Senator on Sunday evening.

Senator NELSON. Well, if the money is missing, it is not automatic that there was a violation of any law or that somebody is engaged in any criminal activity. On the other hand, the money is missing, and when it is missing, one does not know whether there is absconding with some money. But wouldn't the controls be such that you would be able to know whether it is just money missing or whether somebody has accessed the money?

Mr. STEENKAMP. Senator, it is difficult for me to answer that because, unfortunately, at the moment I do not yet as we sit here know what went wrong, so it is hard for me to be able to—I do not know which control went wrong. I do not know, you know, where, I guess, the apparent breakdown occurred to be able to answer.

Senator NELSON. But it would have to be some of a breakdown if the controls are set in place so that this should not happen. Nothing is perfect, I understand, but if it breaks down, it is either because somebody intended to break it down or because it was inadequate. Is that accurate?

Mr. STEENKAMP. Senator, not knowing what happened, it—I apologize. It is hard for me to answer, you know, whether it was a breakdown, whether it was a willful action. It is hard for me to answer.

Senator NELSON. In your opinion, will the investigation be able to determine ultimately which is the case?

Mr. STEENKAMP. I truly, truly hope so.

Senator NELSON. Okay. Thank you, Madam Chairman.

Chairwoman STABENOW. Thank you.

Senator HOEVEN?

Senator HOEVEN. Thank you, Madam Chairman.

Mr. Corzine, how could the customer accounts be short if there were not transfers to the company accounts for the use of the company? How else could they be short?

Mr. CORZINE. Well, again, I want to stay away from as much speculation as I can, but we have customers also withdrawing funds from the firm. There are all kinds of transactions associated with that at this moment in time. There are possibilities in this repurchase agreement, the proper use of Rule 1.25 investments of repurchase agreements between the FCM and the broker-dealer that could have broken down.

I think I indicated in my written testimony and again this morning the commercial paper. The \$1.3 billion commercial paper that was sold on Thursday was Rule 1.25-eligible securities, properly available for offsetting segregated account monies. And when those are sold, then there is always the possibility of other failures to deliver, funds not crossing appropriately.

Senator HOEVEN. Aren't you required to have controls in place that prevent the use of customer funds by the firm for benefit of the firm and that properly account for these transactions you just described? Aren't you required to have a system and controls to cover those issues?

Mr. CORZINE. Senator, the short answer is yes, but I want to make clear that there are investments that can be made of customer segregated funds in the Rule 1.25-eligible securities. And when you transact in those, there is always a chance of operational breakdown. And I could not speculate whether that happened or did not happen unless I looked at the records.

Senator HOEVEN. But you are responsible to have controls in place to properly account for that, track that, and report that. As the CEO aren't you required to certify that you have those types of systems?

Mr. CORZINE. Senator, in all cases—I think Senator Stabenow brought forth our signatures on the verification with regard to Sarbanes-Oxley on the end of quarter of March—our fiscal fourth quarter in March 31, 2011, and those controls have to be verified both by internal auditors and on an annual report have to be certified by external auditors, so the answer is yes.

Senator HOEVEN. All right. And if those systems are in place and they are not adequate to do what they are designed to do, then when you are investing firm money in foreign bond currency transactions or bonds denominated in foreign currency, aren't you in essence speculating with customer dollars if those controls are not accurate and you do not make sure that those controls are accurate?

Mr. CORZINE. Senator, I do not have access to the records, so I cannot be absolutely certain, but none of us, I would think, would argue that we were using FCM, futures commission merchant, money for the purposes of investing in the foreign sovereigns. It was not an eligible security for client segregated funds. These positions had been in place many, many months through periods of time when we had gone through the process that you asked me to verify existed. And so I think there is reason to draw the conclu-

sion that the foreign sovereigns that are talked about involved in the RTM situation were not in any identifiable way mixed up with FCM customer money.

Senator HOEVEN. You had a responsibility to maintain those systems so that customer dollars were not used in firm investments where you took a leveraged and, in fact, speculative position. You also had a responsibility to make sure that customer dollars were not transferred to or for use of the firm. But, clearly, one of those two happened, or the customer accounts would not be short.

Mr. CORZINE. I just want to say again what I said to Senator Chambliss before the break, that—and I think we can verify this from others. Rule 1.25-eligible investments of customer money is appropriate with regard to those segregated funds. And——

Senator HOEVEN. If they directed funds——

Mr. CORZINE. —euro sovereigns do not fit——

Senator HOEVEN. —be used in that way and—if they directed that the funds be used in that way, and if they did so, those are not the dollars they are short. The dollars they are short were either moved out of their account for benefit of the firm, or you have got an accounting error, and you have a responsibility to make sure you have an accounting system that properly segregates those dollars.

Mr. CORZINE. As I said in my oral statement, as I said in my written statement, there could have been breakdowns in those systems. We believed we had the people, the procedures, the policies in place to protect client segregated funds.

Senator HOEVEN. What is your responsibility to recover those lost customer funds?

Mr. CORZINE. My responsibility is to allow for the facts to be developed that find where that money has gone, just as it would be for any of us. I actually have no authority with regard to MF Global or the trustee today, but I believe that the trustee and the other investigations that are ongoing will be able to discover where that money went.

Senator HOEVEN. Is it your belief that we will recover the balance of those customer funds?

Mr. CORZINE. I am hopeful, Senator. I note the Friday activities that were in the bankruptcy court that, according to the representations I know about, get to 72-percent recovery for clients. I think I read that there are additional hundreds of millions of dollars held back and that there is identified customer money in London. So I am hopeful. I am not involved in that process. I think it was all of our expectations that we were not out of balance until we were all informed that Sunday evening that we were. And so I will repeat: I am hopeful that there will be full recovery very quickly.

Senator HOEVEN. And you would acknowledge you have a responsibility to cover those funds?

Chairwoman STABENOW. We need to make this quick at this point. We will have another round, and so if you would like to quickly answer that.

Mr. CORZINE. Senator, I can only be hopeful, since I am not in—I now have no operating authority with regard to that. I am trying to cooperate, as I sit here today, as I have with other hearings.

Chairwoman STABENOW. Thank you very much.

Senator Grassley?

Senator GRASSLEY. Thank you. I have a short statement, and then I have a couple questions for Mr. Corzine.

Now, you have all been asked repeatedly today about where the money went and whether you authorized the transfer of funds out of the segregated customer accounts. I share my colleagues' interest in finding answers to these questions.

I am baffled that the top three executives of the company cannot answer basic questions about what happened to the customers' money. Your supposed lack of knowledge as to what happened inside the walls of MF Global is alarming. I want answers and Iowa farmers want answers on where the customers' money went.

I am not going to belabor the point by asking where the money went. It is apparent that none of you are able or willing to offer an explanation today. I guess we will just have to see what we learn through the ongoing investigation and any subsequent proceedings.

Now, Mr. Corzine, I have some questions regarding some of the interactions with regulators at the time of MF Global. It has been reported that you were not required to retake your Series 7 or Series 24 exams before assuming your role at MF Global. FINRA requires investment professionals to retake these tests if they have been out of the industry for 2 years. Despite the fact that you had been out of the financial services industry for 11 years, FINRA gave you a waiver, and you did not take these tests.

Did you seek a waiver from FINRA so that you would not have to retake your Series 7 and Series 24 tests?

Mr. CORZINE. To my recollection, Senator, my legal counsel made that request.

Senator GRASSLEY. So through your—

Mr. CORZINE. General counsel.

Senator GRASSLEY. So through your legal counsel you were granted the waiver?

Mr. CORZINE. Yes, Senator.

Senator GRASSLEY. On this request to FINRA.

Mr. CORZINE. That is my understanding.

Senator GRASSLEY. Okay. Now, another question. Trying to figure out how much involvement Chairman Gensler had in the early stages of the MF Global problems, I have this question. Prior to October 31st, did you have any discussion with Gensler about the state of affairs at MF Global and whether MF Global was in trouble? And if you did have conversations, when were those conversations and what exactly did you discuss with Chairman Gensler?

Mr. CORZINE. Senator, Chairman Gensler may or may not have been on some of the joint regulatory calls where I gave updates to a broad set of regulators on the progress, or lack thereof, with regard to the sale of the firm, a posting on what our actions were in reducing the size of our balance sheet and generating liquidity. To the best of my knowledge, he was only on that 31st general call, but other than those postings to regulators, I am not aware of any conversations with him.

Senator GRASSLEY. Okay. So then at least, you are telling me for sure that you did not have a one-on-one conversation with Mr. Gensler at any time?

Mr. CORZINE. To my recollection, I have not with regard to the activities in the last 10 days. I have written in my written statement everything that I can recollect about any specific interactions—what was it? A July teleconference call, courtesy calls when I first took over at MF Global, and then—

Senator GRASSLEY. But not during this period of time—

Mr. CORZINE. Not in that period of time.

Senator GRASSLEY. —of the last few days before bankruptcy that you had any one-on-one telephone conversation with Gensler.

Mr. CORZINE. Correct.

Senator GRASSLEY. Okay. Now, a last question for you, and then I have a question for Mr. Steenkamp. If none of you know what happened to the customers' money, could each of you give me or the Committee the name of some MF Global employee who can come and tell this Committee what happened to the segregated customer accounts? There has got to be somebody there that can tell this story. Just give us a name. Joe Blow? Mary Smith?

Mr. CORZINE. Senator, my view would—I would go to our treasury department and or treasury ops, as we talked about earlier, and the people who headed that were probably closest to the scene of the action.

Senator GRASSLEY. But that does not give us one name for sure that could answer our questions. You are saying somebody in that office, but you do not really know who it is.

Mr. CORZINE. The outline of the structure, I think Mr. Steenkamp presented, starts with certain people at the very top of it. I happen to know that the individual was on vacation that week, Christine Serwinski, and the CFO of the North American operations, that team of people—and it is quite large—would be one of those places that you might look.

Senator GRASSLEY. Okay. Then I would have this question for Mr. Steenkamp. Who specifically told you that Sunday that customer money was missing?

Mr. STEENKAMP. If I recall correctly, I was in a room with a large group of people as we were working on the acquisition, and one of our folks from finance had been notified that there was an issue and had just pulled me aside in the room and notified me.

Senator GRASSLEY. Okay. What is his name or her name?

Mr. STEENKAMP. It was our global product comptroller, Mike Bolan.

Senator GRASSLEY. Okay. Thank you, Madam Chairman.

Chairwoman STABENOW. Thank you.

Senator THUNE?

Senator THUNE. Thank you, Madam Chairwoman.

If I could just ask any of you to think of any way or provide an example of how \$1.2 billion of customer funds could be transferred and disappear without any laws or regulations being violated, I mean, just—in other words, give us a hypothetical scenario of how that could happen without breaking any laws or existing regulations? Does anybody want to take a stab at that?

Mr. CORZINE. Senator, I think anything that any of us would do on that would potentially be misleading. It would certainly be speculative. In my oral and written remarks, I laid out some places

where I thought there were possibilities of where the clearance and settlement system could break down.

Senator THUNE. Senator Corzine, there are reports I have seen that indicate that you were in contact with Chairman Gensler and the CFTC regarding a proposed rule restricting brokers from trading with client money or customer funds in sovereign debt. The rule, which is now being called the “MF Global rule,” was apparently delayed because of your opposition. The CFTC only approved it after MF Global had gone bankrupt.

Why did you lobby against proposed changes to CFTC regulations that would have restricted futures commission merchants from investing customer funds in obligations of foreign governments?

Mr. CORZINE. Senator, to my recollection, I did not speak with Chairman Gensler about the foreign securities aspect, particularly on that conference call on July 20th. To the best of my recollection, I was speaking about the internal repurchase arrangements between a subsidiary and the FCM, as I have stated to the Senator from North Dakota and others, and whether that would continue to be available to FCMs at large or global organizations at large, but not with respect—to my recollection, foreign securities never came up in that discussion, and the only time that foreign securities were available to be invested in FCMs is if you took deposits from a client in foreign currencies.

Senator THUNE. You had said, Senator Corzine, during the House hearing that you did not intend to break any regulations. What did you mean by that?

Mr. CORZINE. I tried to clarify that in my opening statement here this morning. I never gave any instructions to misuse customer funds. I never intended to give any instructions or authority to use—misuse customer funds. And as I have said at least once here, I find it very hard to understand how anyone could misconstrue anything I said would authorize the misuse of customer funds.

Senator THUNE. From what you know now, can you assure this Committee that no regulations protecting consumer funds were violated in the days prior to the bankruptcy?

Mr. CORZINE. Senator, with whatever the range of estimates about the segregated funds not reconciling, I do not think I can give that assurance.

Senator THUNE. There is a New York Times story that indicated that some customer money may have been improperly transferred as early as October 21. Can you confirm that date?

Mr. CORZINE. Senator, I would be completely out on a limb speculating, no idea, and I would have to go back—I literally would have to go back through thousands of pages.

Senator THUNE. Okay. And if you cannot confirm the date, I assume then that you would not be able to give us an idea about when MF Global began transferring funds out of the customer account.

Mr. CORZINE. It would be speculative. I do not have the facts. I do think that the CME has testified that they did an 85-or 90-percent check against the Wednesday—is that the 26th? And I think you can—and they suggested at least in that testimony with rea-

sonable testing of bank accounts and flows that we were in excess. But I really think that is a question that the CME should answer.

Senator THUNE. All three of you have testified that, to the best of your recollection, none of you gave any instructions to anyone at MF Global to transfer funds from segregated accounts, yet it happened. Prior to October of this year, whether to cover margin calls or for any other reason, have there been any other incidents of improper or unauthorized funds transfers at MF Global? Or is this the first time any of you are aware of anything like this happening?

Mr. CORZINE. Senator, from my standpoint, if there had ever been anything like we found out on the evening of October 30th or if there had been—it would not have had to rise to the level, the dimension on that evening—I think any of us would have been notified if we had not then—the Senator from North Dakota would have been absolutely right. We clearly would not have had policies, procedures, and people in place. I am not aware of that, and we have had many audits by external regulators and external auditors.

Senator THUNE. Madam Chair, my time is up. Thank you.

Chairwoman STABENOW. Thank you.

Senator BOOZMAN?

Senator BOOZMAN. Thank you, Madam Chair.

Senator Corzine, can you help me understand? There has been, it seems like, a lot of ambiguity about Rule 1.25. Can you help me understand who would be—what the eligible investments would be that could take place under that?

Mr. CORZINE. Senator, I do not know whether you were here when Senator Harkin gave an introduction to his question to the first panel. I think he listed—and I do not want to be remiss in leaving something off that list, but I have a general idea.

Senator BOOZMAN. You had a trading strategy. Was there a specific time—Mr. Abelow, I think you said you are responsible for day to day. You know, we have had this—evidently there was perhaps a change, you know, using Rule 1.25, using that ability. Was there a specific time when the firm changed their line of investing? We know that, you know, there are a number of different ways of doing it based on Rule 1.25, as the Senator explained.

Mr. ABELOW. Senator, I apologize. In my comments about overseeing day-to-day implementation of the strategy, my responsibilities did not include oversight of trading and position taking.

Senator BOOZMAN. Who was the person that was in charge of that particular—

Mr. ABELOW. I am not certain who—

Senator BOOZMAN. Who would you guess?

Mr. ABELOW. Senator, I think there are two separate questions. The 1.25 securities I believe were in a portfolio that was overseen by the treasury department, and then other types of trading activity had different oversight.

Senator BOOZMAN. In your firm, though, who was responsible for determining, you know, what—they had the latitude of the Rule 1.25. Who made the decisions as to what they were doing?

Mr. CORZINE. Senator, the treasury operations, treasury functions, along with our internal audits would work to assure that the

investments that were held using the customer funds conformed to Rule 1.25, and as I think has been stated, at least until that evening on the 30th, there had not been any indication that had ever been not followed.

Senator BOOZMAN. Right. But we have got a problem. At some point something happened, and I guess—you know, treasury is involved in that process. I guess my question is: Who directly in the firm interfaces with treasury and makes those decisions?

Mr. CORZINE. The decisions about whether you move money is separate from what would be the investment decisions that you might take. The investment decisions that you would take against—I should not say “against.” The investment decisions that you would take had to conform to Rule 1.25, and nobody ever disputed that, nor am I aware of any time that those investments did not conform to that rule.

Senator BOOZMAN. But I am curious. Who—again, I understand what you are saying, but knowing that you have got, you know, this smorgasbord of kind of doing things in a certain way, who made the decisions as far as, you know, your strategy in the investments?

Mr. CORZINE. The strategy at the highest level was reviewed at the board, certainly reviewed by myself. But the actual implementation was done by our treasury personnel.

Senator BOOZMAN. So who is that?

Mr. CORZINE. There are a whole series of people that were involved in treasury, and at time different persons in the firm would—

Senator BOOZMAN. I guess—and I do not mean to interrupt. I guess my frustration—I think Senator Grassley expressed it, too. I mean, we have got this major problem, and you guys, you know, were pretty high in the organization, and yet, you know, when we try and dig and find out kind of what occurred and who did what, nobody can really remember or does not really know. And so it is a problem.

So I guess what we would like for you to do—what I would like for you to do is help us, you know, understand who was involved specifically, and I think that, you know, certainly you should have been in a position to know that.

I yield back the rest of my time. Thank you.

Chairwoman STABENOW. Thank you very much.

I believe we have completed our first round of questioning, so let me continue with our second round, and thank you all again for being here.

Let me talk a little bit more about treasury operations because, Mr. Abelow, it is my understanding—first of all, our Committee staff has been having a number of conversations with people at the operations level to learn more and gather information and so on. And it is my understanding that the treasury operations actually report to you, that you oversee that department. Is that correct?

Mr. ABELOW. It is correct that I oversee operations, and the global head of operations reports directly to me, and treasury operations reports up through several chains to him.

Chairwoman STABENOW. And so what is your responsibility in overseeing the operations of treasury?

Mr. ABELOW. Senator, my responsibilities I think with all of the areas that I oversee, including treasury, are to, first and foremost, ensure that we have appropriate professional personnel in place to oversee those functions and to ensure ongoing functioning of them.

Chairwoman STABENOW. And do you think they were functioning appropriately?

Mr. ABELOW. Other than the normal course of occasional incidents that are reported through operational risk or through audit findings, prior to the period in question, there was no evidence of there being any problem. As I said earlier, the first that we learned about there being an issue with segregated funds was Sunday, October 30th.

Chairwoman STABENOW. And I would like to clarify a little bit more. You have talked a lot, Mr. Abelow, about intended purposes, and this really goes to Rule 1.25, and so I just want to be clear. Do you consider the investments permitted under that rule to be the intended purposes for customer segregated funds? Because that is not what we heard on our first panel in terms of what the farmers' understanding was. Of course, as colleagues have asked about Rule 1.25, internal repo transactions and rehypothecation and loaning and borrowing customer collateral, could any of these transactions have led to the shortfall of customer funds?

Mr. ABELOW. Senator, my understanding, when I made reference to "intended purposes," you are correct, that is that I never heard a conversation where anyone spoke about using customer funds or assets for any purpose other than investment in Rule 1.25-eligible securities.

Chairwoman STABENOW. Are there any other kinds or any other uses of customer funds by MF Global that could have resulted in them being lost? And I am not talking about misuse or unintended purposes at this point, but was MF Global doing anything with customer funds that could have led to a shortfall?

Mr. ABELOW. Senator, I am not aware of any, and so it would be speculation on my part.

Chairwoman STABENOW. Okay. Let follow up and ask all of our panelists a little bit more about rehypothecation, in effect, using customer assets as collateral to support financing for MF Global. This practice puts customers' assets at risk if MF Global were to default on its loans. How common was it for MF Global to be rehypothecate customer collateral? And, again, could this be where the missing funds went? Mr. Corzine?

Mr. CORZINE. Senator, I will start with I really do not have any knowledge about the term "rehypothecation" in this context, and so anything that I said here would be speculative. It is not a term that we used at the firm. I am not aware of that being something that took place.

Chairwoman STABENOW. Okay. Mr. Abelow?

Mr. ABELOW. I am not aware either. I did not directly engage in financing activity on the part of the firm.

Chairwoman STABENOW. Mr. Steenkamp?

Mr. STEENKAMP. Financing activity was not something that fell within finance, and, you know, in the context that I know rehypothecation, it is in a standard repo/reverse repo type financing context in the broker-dealer.

Chairwoman STABENOW. I know I have a lot more questions about this particular practice that I want to make sure we get into, but I wonder if any of you would respond to why we should permit trades that potentially encourage excessive leverage and create risk. And are these trades, in effect, a legal way to violate a fundamental principle, which is to protect customer money? Mr. Corzine?

Mr. CORZINE. Senator, if the Rule 1.25 investments of segregated funds was followed, then those securities, based on the judgment of those who set that rule, should be available in a period when customers want their money back, and that is the intent of establishing that security positions can be taken far more conservative than what would occur in the broker-dealer or for house investments. And those investments should be just exactly inside those kinds of constraints. And if that were the case, then those monies should be available for clients, protection of client funds.

Chairwoman STABENOW. Which is why we are here, because they are not, right? I mean, the concern is that funds were not kept segregated. At least at this point we are not going to be able to identify 100 percent of the funds that were customer funds, which is one of the reasons why we are here.

Finally, Mr. Steenkamp, you spent a lot of years in accounting and financial reporting, obviously very accomplished. I guess I would say—and I think this is a fundamental question. How is it that large sums of money could be moved from customer accounts without being elevated to senior levels of management? As the chief financial officer, how could this happen within MF Global?

Mr. STEENKAMP. I mean, Senator, not knowing, and not being able to investigate myself, I am asking the exact same question.

Chairwoman STABENOW. But as a general practice. As a general practice, did large sums of money move without senior management being involved or being aware?

Mr. STEENKAMP. As a general practice, something like that should be elevated, escalated, any movement of client funds for a broker-dealer activity should be elevated and escalated as general practice. And as I mentioned, the first time we found out about it was on the Sunday, Sunday evening.

Chairwoman STABENOW. Thank you.

Senator Roberts?

Senator ROBERTS. Thank you, Madam Chairwoman. I think I am going to paraphrase from you and just simply say what we are trying to get straight here is your firm that the three of you were in charge of, amid the eighth largest bankruptcy in the history of the United States, has somehow lost \$1.2 billion of your customers' money, and none of you know where it went. And that is what is causing a lot of questions around here.

I want to go back to Mr. Abelow. Earlier today you confirmed that the treasury operations—and apparently we need the treasury operations person here. Her name is Christy Vavra, by the way. She was the head of treasury ops. She could sit down there in that empty chair, I am sure. She was under your area of responsibility.

Then you went on to say—but if somebody gave an order to move the money, would Christy know it? That would be my question to you. But then you went on to say, well, she would report to the person in charge of global operations. Now, who is that?

Mr. ABELOW. Senator, I do not know

Senator ROBERTS. You do not know.

Mr. ABELOW. No, no. I apologize. I—

Senator ROBERTS. So you do not know who is in charge of global operations, which comes under your area of responsibility. I just told you the name, which I doubt you knew, of the treasury ops person. Maybe you did not—or did. If someone gave an order to move the money around, which Christy Vavra know it?

Mr. ABELOW. Senator, I apologize. What I was intended to say was I did not know if she reported directly to the head of operations or whether she reported to someone who reported to the head of operations. I do know the name of the head of operations.

Senator ROBERTS. How many heads of operations—how many heads do we have to have around here before we finally drill down and find somebody's name that knows what the heck is going on?

Mr. ABELOW. Senator, I understand your frustration and the frustration of everyone in the room, and as I expressed in my testimony at the beginning, I, too, would like to know exactly what happened to the customer funds.

Senator ROBERTS. Why don't you together a PowerPoint or a TO chart or something so we could put everybody's name and finally we would probably get down to the custodian.

Earlier you said the Break the Glass plan that was presented to the firm's leadership was dependent upon the use of your revolving credit line. Now, the credit line was already there. It does not sound like a contingency. What was the Break the Glass plan if you exhausted the credit line?

Mr. ABELOW. Senator, I have not looked at the so-called Break the Glass scenario in more than 6 weeks, and so I do not recall exactly what was in it. It was a scenario that was designed to simulate—

Senator ROBERTS. So it is not a contingency. Now it is a scenario, right?

Mr. ABELOW. It was designed to simulate what might occur if there were a loss of liquidity at the firm.

Senator ROBERTS. So was it a plan? Was it a contingency? It was just—what?

Mr. ABELOW. It was a—I believe that initially it was done literally as that, to simulate what would happen and what would the liquidity impact on the firm be under—

Senator ROBERTS. Well, it sounds like—

Mr. ABELOW. —a certain stress scenario.

Senator ROBERTS. It sounds like somebody made a decision, either top or somewhere in your heads of operation here, that it became operational.

Mr. ABELOW. The intention was that the next step in that plan would have been to develop an operational plan. I do not believe one was ever developed from that.

Senator ROBERTS. Okay. Let me return to a point made earlier. You state in your testimony that the final days at MF Global were a classic run on the bank, yet Governor Corzine told us today that you all had enough cash to cover demand on Friday, the 28th? Was there a run on the bank, or did you have enough cash? It is either one or the other.

Mr. ABELOW. Senator, I believe that at the end of every day that week that we believed that, to the best of my recollection, we were advised that we did have liquidity on hand. But it was a run on the bank in the sense that liquidity sources were evaporating.

Senator ROBERTS. Well, the classic question is: If you had enough cash to cover the run, why did you fall into bankruptcy?

Mr. ABELOW. Senator, I believe that after we had failed to engage in a transaction to sell the firm, after we had discovered that there was an apparent gap in our segregated funds, we no longer thought we were in a position to continue operating.

Senator ROBERTS. Okay. Governor, in your testimony, you state that during the week of October 24 you reduced the MF Global match book by \$10 billion. You further state that you took extraordinary steps to ensure that you were able to honor customer requests to withdraw funds or collateral. Is this correct?

Mr. CORZINE. It is, sir.

Senator ROBERTS. Okay. Thank you. You said you drew down your line of credit from JPMorgan. That was about \$1.2 billion, I think. On October 27, you stated, you sold \$1.3 billion in commercial paper, over \$300 million in corporate securities. Friday you sold \$4.5 billion in U.S. treasuries. Is that about correct?

Mr. CORZINE. I think that is what my written statement—

Senator ROBERTS. In addition, you said that during the week you unwound hundreds of millions worth of RTM and sold the underlying debt instruments. How much was that? I think I understand it is about \$900 million.

Mr. CORZINE. I think that is the number, sir.

Senator ROBERTS. So we have \$1.2 billion from JPMorgan, \$1.3 billion in commercial paper, \$0.3 billion in corporate securities, \$4.5 billion in treasuries, and \$0.9 billion in RTMs for a grand total of \$8.2 billion. By my math, \$10 billion minus \$8.2 billion is \$1.8 billion. Where did this unaccounted for \$1.8 billion come from? And could it be “loans” from your customer segregated accounts according to the Breaking the Glass plan? I am speculating.

Mr. CORZINE. Senator, I would have—my math may be poor, but my addition to that would be \$10 billion of reduction in assets by reducing the match book. It would be reducing \$4.5 billion on the asset side by the sale of the agencies, \$1.3 billion on the commercial paper. As you know, the RTMs were derecognized, so that would not have been a reduction of the balance sheet and whatever the corporate securities were.

There would be liabilities that are reduced at the same time, both on—on every one of those assets. And the purpose of that whole process, except for the \$1.3 billion in commercial paper, was to produce less in margin calls from—or less margin postings that would actually be returned to the firm in each of those transactions. The commercial paper was Rule 1.25-eligible, and that was sold for purposes of having cash, so when the kind of people who were here on the first panel were asking for their money, we would have the cash immediately for that purpose.

Senator ROBERTS. Madam Chairwoman, I am out of time, and I will await the third round. Thank you so much.

Chairman STABENOW. Thank you.

Senator Conrad?

Senator CONRAD. Thank you, Mr. Chairman.

You know, what flummoxes us is how there can be \$1 billion or thereabouts missing and nobody seems to know where it has gone. I think you would agree it is a curious thing. I think somebody watching on television from home would say, "Wait a minute. These are the guys running the company and a billion dollars goes missing. How is it that they do not have any idea?"

You know, I have heard speculation—I referenced it in my first round—that in those chaotic days when Moody's had downgraded and all of a sudden the stock price plunges and you then have to contemplate bankruptcy, and, therefore, firms probably are not sending you money that owe you money, so you are in a liquidity crunch even if those trades on European debt were actually profitable trades, which everything I see now—all the reading I have done suggests, boy, these guys made a bunch of risky trades and lost money on them and, therefore, there is the problem. Everything I read is those trades are actually profitable trades, profitable positions, at least until the roof starting coming in. But then you are downgraded, so there is a liquidity crunch.

Do any of you know of an attempt in those final hours to get London to send you back \$170 million that was loaned to them?

Mr. CORZINE. Senator, I have no input on that.

Senator CONRAD. You have not heard that there was a call that went from MF Global, your headquarters in either Chicago or New York, to London saying, hey, that \$170 million we sent you in a loan, we need that back?

Mr. CORZINE. Senator, the only thing that I know about with regard to this is that there were overdrafts in London, which I talked about in my oral statement.

Senator CONRAD. Overdrafts on their accounts by them?

Mr. CORZINE. Overdrafts to JPMorgan in London accounts.

Senator CONRAD. In London accounts. And to your knowledge, was \$170 million sent to London as a loan?

Mr. CORZINE. Senator, I do not know the amounts, transactions. Those are the kind of things that you would want to see from records.

Senator CONRAD. Would it surprise you that there was money sent to them and then an attempt to get the money brought back to headquarters?

Mr. CORZINE. In the normal course of any day's transactions—and now I am speculating—only that—and I am not speculating about the close. But on any business day, lots of transactions back and forth between London and New York.

Senator CONRAD. Mr. Abelow, were you advised that there had been a loan extended to London of \$170 million and then a subsequent attempt to get that money repaid?

Mr. ABELOW. Senator, I do not recall any specific conversation about a loan to London. What I do recall—and, forgive me, my memory is—this was a hectic time. Monday morning, October 31, and so this is post-discovering that there is an apparent gap in client segregated funds, I recall a series of conversations of asking people to identify all cash and assets that may be outside of the control of the FCM and returning them to the FCM. That was in response to this surprise to us on Sunday night that there is now

a problem. But I do not recall a specific loan or any specific amount or account being a part of that conversation.

Senator CONRAD. Let me ask you, were the three of you talking during this period? I assume you were.

Mr. CORZINE. Of course, although we were all focused on different activities of emphasis, as I have said in my remarks, I focused on selling assets, bringing the balance sheet down, had little less impact on selling of the firm, although I was active in those dialogues with investment bankers and also working our trading floors around the globe to make sure that people were reducing positions, preparing myself for postings with regulatory agencies, trying to gather information. I think other people were working on other functions. That did not mean we did not check in with each other, but it was not that we were standing next to each on an hour-or minute-to-minute basis.

Senator CONRAD. Well, let me ask you this, if I can, because, you know, we have an obligation to try to learn what happened here. We have got constituents that have been adversely affected. When you learned—or when you were told that there was this—I think it was at the time a \$950 million shortage, what did you say to each other? Was there a theory? I mean, I would think, if it were me and I heard there was this shortage, the first thing that would come to my mind is, “How in the hell did this happen?”

Mr. Abelow and Mr. Corzine, did the two of you talk and say, “What in God’s name happened here?” And did you have a theory?

Mr. CORZINE. Senator, that is probably a polite way for a response.

Senator CONRAD. I am Scandinavian, so we try to be polite.

Mr. CORZINE. The reaction is marshal all the resources—I think you heard Mr. Steenkamp talk about it—and find out where this money is and why we are out of reconciliation, and then step back and let the people who know how to read those records, those thousands of pages of records, get on with the business. Concerned about our clients, concerned about the available ability to deal with a rising sun and an opening of markets.

Senator CONRAD. Okay.

Chairwoman STABENOW. Thank you very much

Senator Chambliss?

Senator CHAMBLISS. I will pass this round.

Chairwoman STABENOW. All right. Thank you.

Next, Senator—I think Senator Boozman has left. Senator Johanns?

Senator JOHANNNS. Mr. Abelow, you and Mr. Corzine have been close through the years, haven’t you?

Mr. ABELOW. We have worked together for a number of years, sir.

Senator JOHANNNS. You were his chief of staff.

Mr. ABELOW. I was his chief of staff when he was Governor of New Jersey.

Senator JOHANNNS. Mr. Steenkamp, I have been watching your body language during this hearing, and you just seem like the odd man out. You seem very uncomfortable about what is going on, and mostly you have been quiet. How long did you stay at this company after you knew that client money was missing?

Mr. STEENKAMP. Senator, I am still at MF Global Holdings—
Senator JOHANNNS. You are still there today—

Mr. STEENKAMP. —as I mentioned in my statement, and I am still trying to do any efforts that I can to help the trustee of the holdings company to maximize value.

Senator JOHANNNS. Okay. So you have access to the records.

Mr. STEENKAMP. No. I have access to MF Global Holdings information, the holding company, but I do not have access to either the personnel or the records of MF Global Holdings, Inc., for the most part because, as I mentioned, you know, on October 31st when the SIPC trustee was appointed, there were very clear boundaries put up.

Senator JOHANNNS. What day did the clients' missing first start missing?

Mr. STEENKAMP. Well, on the Sunday when we found out, it was reported to me that there is a segregation issue on both the Thursday calculation as well as the Friday calculation. And my understanding was that the Thursday calculation had originally not shown a deficit, but that subsequently there was a reconciliation issue which proved that to be wrong.

Senator JOHANNNS. Now, \$1.2 billion, I think by everybody's definition, especially somebody else's money, is a massive amount of money. As I understand it, never in the history—never in the history—has client money ever gone missing. Wouldn't there be some process or some person who had sufficient integrity in this organization to say, "Oh, my Lord, clients' money is disappearing. I need to talk to the boss"? And are you aware of anybody in the organization in that Thursday, Friday, Saturday who said, "Something very, very serious is happening," or something like that and drew it to somebody's attention? And who is that person, and whose attention was it drawn to?

Mr. STEENKAMP. Senator, I am not aware of anyone until I was notified of it on the Sunday.

Senator JOHANNNS. So it did not come to your desk before you were notified on Sunday.

Mr. STEENKAMP. Correct.

Senator JOHANNNS. So in this entire organization, although there must have been many, many people who knew that money was being drained out of client accounts, being transferred, did not step up and say to top management or at least to you, "There is a problem here"?

Mr. STEENKAMP. Senator, apologies for repeating myself, but there had been no one—I mean, there had been no idea of this until that Sunday. I mean, it was utter shock, I think as we have said, when we found out about it for the first time, which was Sunday.

Senator JOHANNNS. Mr. Steenkamp, do you realize how incredible your testimony, and the other two gentlemen, how incredible that sounds to this Committee that \$1.2 billion, the first time in history this had ever happened, could get drained away from customers and it does not come to your attention or somebody does not seek your authorization or at least say, "Geez, by the way, what is going on here?" Doesn't that strike you as incredible?

Mr. STEENKAMP. Senator, I wish I could—you know, I mean, we found out about it on Sunday, and there were no issues that we were—that I was aware of with regards to client assets being used in the broker-dealer up to that point, at any point as far back as I can remember. And our procedures, as I mentioned, were reviewed in detail by external and internal parties.

Senator JOHANNNS. How would you get money out of a client account in this organization? Did somebody have to authorize it? I mean, somebody in this organization had to have the ability to say light screen, take the money?

Mr. STEENKAMP. Senator, so, again, as global CFO, you know, we—you know, my involvement was not in approval of client balance movements or involvement in client balance movements.

Senator JOHANNNS. Who would have that authority?

Mr. STEENKAMP. We delegate those responsibilities to the senior finance professionals, the experts that do this on a day-to-day basis in finance, treasury, and treasury operations.

Senator JOHANNNS. And who were they?

Mr. STEENKAMP. Every entity would obviously be different depending upon the rules and regulations that existed in the entity and in the country and the jurisdiction it operated in.

Senator JOHANNNS. I am just interested in the United States. Who—

Mr. STEENKAMP. In MF Global Inc., my understanding is that there were numerous controls in place that covered treasury and treasury operations.

Senator JOHANNNS. You have said that. I want names. Who would authorize, who would have the oversight, who would have the ability to say take money out of client accounts?

Mr. STEENKAMP. Senator, I do not think anyone would have the authorization to take money out of client accounts to use for firm purposes.

Senator JOHANNNS. Well, who has oversight—you know, you are dancing around with me. Who would have the oversight of those accounts where that money has gone? And I want a name.

Mr. STEENKAMP. Senator, I honestly am not trying to dance around the issue. I am just not—I am not 100 percent sure who the exact person—I think there are numerous people, as I mentioned. I think some of the names have already been mentioned around the treasury and the treasury operations people. I am not sure who had—

Senator JOHANNNS. I am out of time, and I want to be respectful of the other Senators, but as part of your testimony, I am requesting that those names be provided to the Committee, because I would like those people sitting where you are sitting so we can ask them: How did it come to be that \$1.2 billion, the first time in history, was taken out of customer accounts? Will you do that?

Mr. STEENKAMP. I will try my best, Senator.

Senator JOHANNNS. Thank you, Madam Chair.

Chairwoman STABENOW. Thank you very much, and let me just say also to your last question, Senator Johanns, our Committee staff are interviewing numerous people, are having conversations at various levels of MF Global, and we are asking for an accounting

of the checks and balances and who was in charge so that we, in fact, can answer those questions. So thank you very much and—

Senator ROBERTS. Madam Chairman, would you yield just for a comment?

Chairwoman STABENOW. Yes, Senator Roberts.

Senator ROBERTS. In regards to Mr. Steenkamp's observation, I think I know where he is coming from, but I do not care what business you are in; you do not delegate responsibility. You may delegate authority, but you do not delegate responsibility. And every time you say that you are responsible for X, Y, Z, you are responsible for that. And that is why Senator Johanns I think is so keen on this. I said give us a PowerPoint, give us names, give us something. The only one we have come up with is Christy Vavra. I do not know if Christy would say, "Well, I delegated responsibility, so I do not know." And we have to go down one layer. After a while this gets to be ridiculous. It is you three sitting here.

I am sorry to take more time.

Chairwoman STABENOW. Thank you. I very much appreciate the comments, and it is important that we get as specific information as we can. So we thank all of you for coming forward and speaking with us, and we look forward to continuing to ask these questions and get the answers as to where the money is and who, in fact, was responsible for the transactions. Thank you very much.

We will ask our next panel to come forward, and we thank them for their patience.

[Pause.]

Chairman STABENOW. We will ask our third panel to come forward. We appreciate your patience. It has been a long day, but it is very important that we hear from all of you because the third panel is—all of you are extremely important in all this process, and so we want to make sure to lay out all the parameters today even though we know that it is a long hearing today. But we thank all of you for being here.

Let me introduce our three panelists, and then we will ask, as you know, for an opening statement. Of course, we want whatever written information you would like to give us, and then we would ask for 5 minutes of verbal testimony, and then we will have our questioning.

So our first panelist is the Honorable Jill Sommers. Jill Sommers is a Commissioner for the Commodity Futures Trading Commission. In 2005, she was the policy director and head of governmental affairs for the International Swaps and Derivatives Association. Prior to that, Ms. Sommers worked in the Governmental Affairs Office of the Chicago Mercantile Exchange where she was instrumental in overseeing regulatory and legislative affairs for the exchange. Welcome.

Next we have Mr. James W. Giddens. Mr. Giddens is a trustee for the Securities Investor Protection Act liquidation of MF Global. He is also the co-chair of the Bankruptcy and Corporate Reorganization Group at Hughes Hubbard & Reed LLP. Welcome to you as well.

Finally, we have Mr. Terrence Duffy. Mr. Duffy is the executive chairman for the CME Group based out of Chicago, Illinois. He has been a member of the board since 1995, was president of TDA

Trading from 1981 until 2002, and has been a member of CME since 1981.

So welcome to all of you, and before giving your testimony, I would ask you to rise and to raise your right hand. Do you swear that the testimony you are about to present is the truth, the whole truth, and nothing but the truth, so help you God?

Ms. SOMMERS. I do.

Mr. GIDDENS. I do.

Mr. DUFFY. I do.

Chairman STABENOW. Thank you.

Commissioner Sommers, we would ask you to start with your testimony.

**STATEMENT OF HON. JILL E. SOMMERS, COMMISSIONER,
COMMODITY FUTURES TRADING COMMISSION, WASH-
INGTON, DC**

Ms. SOMMERS. Good afternoon, Chairwoman Stabenow, Ranking Member Roberts, and members of the Committee. Thank you for inviting me here today to discuss the MF Global bankruptcy. I understand the severe hardship this bankruptcy has caused for customers of MF Global. These customers correctly understood the risks associated with trading futures and options, but never anticipated that their segregated accounts were at risk of suffering losses not associated with trading. Many customers have reached out to me and my staff directly, and we are doing everything we can to get as much of their money back to them as quickly as possible. I have made this my number one priority.

The Commission has dozens of staff members in New York, Chicago, and Washington working on these issues. I am unable to discuss matters that might compromise the ongoing enforcement investigation or parallel investigations by any other Government agency, so I will focus my comments on the bankruptcy cases pending in New York and on the legal requirements surrounding the segregation of customer funds held at futures commission merchants.

As I understand the Securities Investor Protection Act of 1970, the SEC has the authority to refer an entity registered as a broker-dealer to the Securities Investor Protection Corporation if there is reason to believe that the entity is in or is approaching financial difficulty. SIPC may initiate a liquidation proceeding to protect customers of an insolvent broker-dealer when statutory criteria are met.

When a broker-dealer is also a registered FCM, as MF Global was, there is one dually registered entity and the entire entity gets placed into liquidation. Because there is one entity it is not possible to initiate a SIPA liquidation of the broker-dealer and a separate bankruptcy proceeding for the FCM. It is important to note that when a dually registered BD/FCM is placed into a SIPA liquidation, the relevant provisions and protections of the Bankruptcy Code, the Commodity Exchange Act, and the Commission's regulations apply to customer commodity accounts just as they would if the entity were solely an FCM and in a non-SIPA bankruptcy.

The Commission is no stranger to FCM bankruptcies. Lehman Brothers and Refco are two of the most recent. While the Lehman

Brothers bankruptcy was monumental in scale and the Refco bankruptcy involved serious fraud at the parent company, commodity customers did not lose their money at either firm. In both instances, commodity customer accounts were wholly intact; that is, they contained all the open positions and supporting collateral for those positions. That being the case, customer accounts were promptly transferred to healthy FCMs, with the commodity customers having no further involvement in the bankruptcy proceeding. Unfortunately, that is not what happened at MF Global because the customer accounts were not intact.

In FCM bankruptcies, commodity customers have an exclusive right to customer property. This includes, without limitation, segregated property, property that was illegally removed from segregation and is still within the debtor's estate, and property that was illegally removed from segregation and is no longer within the debtor's estate, but is clawed back into the debtor's estate by the Trustee. Commission regulations also allow other property of the debtor's estate to be classified as customer property to make up any shortfall.

Within the first weeks of the MF Global bankruptcy, the trustee, with the encouragement and assistance of the CFTC, transferred nearly all positions of customers trading on U.S. commodity futures markets and transferred approximately \$2 billion of customer property.

On December 9th, the bankruptcy court granted a motion to transfer an additional \$2.1 billion back to customers. When this additional transfer goes forward, commodity customers should have received approximately 72 percent of their account values as reflected by the books and records of MF Global. These demonstrate that commodity customers are receiving the highest priority in claims to the bankruptcy estate. We understand that more must be done.

An FCM is authorized to invest funds that are in customer segregated accounts. This authorization is found in Section 4d of the CEA and in Commission Regulation 1.25. The Commission finalized changes to Regulation 1.25 just last week. Those changes just reinforced the long-held view of the Commission that customer segregated funds must be invested in a manner that minimizes their exposure to credit, liquidity, and market risks to preserve their availability to customers and DCOs.

All Regulation 1.25 investments are subject to a general prudential standard which requires that all permitted investments be consistent with the objectives of preserving principal and maintaining liquidity.

While our current focus is on returning as much money as possible to customers, we are expending an enormous amount of effort to locate the missing customer funds and pursuing the enforcement investigation. All of the information we learn during these aspects of our work will be relevant to the Commission as we consider "lessons learned" and any policy responses or regulatory changes.

Obviously, the Commission has a great deal of work to get customer funds back where they need to be, to determine what went wrong with segregated funds at MF Global, to determine whether to prosecute any violations of the Act, and to determine what needs

to be done to prevent a similar circumstance in the future. Commission staff is coordinating on these issues with other regulators, both international and domestic. We are also working closely with the trustee to provide whatever support he needs to resolve issues with commodity customer accounts. I greatly appreciate the continued support of this Committee as we move forward with this important work.

Thank you.

[The prepared statement of Ms. Sommers can be found on page 139 in the appendix.]

Chairman STABENOW. Thank you very much.

Mr. Giddens?

STATEMENT OF JAMES W. GIDDENS, TRUSTEE, SECURITIES INVESTOR PROTECTION ACT LIQUIDATION OF MF GLOBAL INC., NEW YORK, NEW YORK

Mr. GIDDENS. Chairwoman Stabenow, Ranking Member Roberts, and members of the Committee, thank you for inviting me to testify today about efforts to identify, preserve, and return assets to the former customers of MF Global Inc. I am the court-appointed trustee for the Securities Investor Protection Act liquidation of the failed broker-dealer, MF Global Inc. I appreciate the interest of this Committee and other Members of Congress, including the direct encouragement of Chairwoman Stabenow and Senator Roberts to expedite the returns to customers as quickly as we can.

Along with my staff, I have been working closely and continuously with the Securities Investor Protection Corporation, Commissioner Jill Sommers, and the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Chicago Mercantile Exchange. By statute, the trustee is the customers' advocate. My staff includes legal experts, consultants, and forensic accountants. We take very seriously our obligation to protect customers of the failed brokerage. Our primary mission is to look out for the customer and credit interest. We are focused on returning assets to customers as quickly as possible in a manner that is fair and consistent with the applicable provisions of the Securities Investor Protection Act, the Bankruptcy Code, and the CFTC regulations.

Every distribution we make must be approved by the bankruptcy court on notice to all customers and parties in interest. We are distributing as much as we can as soon as we can within the law. And while we work around the clock on identifying, preserving and distributing customer assets, my office has made every effort to keep customers informed. We have a website which had, I think, more than 10,000 inquiries. Information on the status of the proceeding is posted to the website daily. In addition, my staff is answering calls and e-mails and holding meetings with customer groups and their counsel. A call center and a website, as we indicated, are in operation. We also will be mailing to all 36,000 remaining customers statements of their last positions and reflecting as best we can the first two transfers to assist them in understanding where we are in the process and in completing claim forms.

I am very pleased to report the distributions to nearly all 36,000 former retail customers, whether farmers, day traders, or institu-

tional investors, have been made within weeks of the bankruptcy filing. We are now in the process of implementing a third bulk distribution that will bring the total amount of customer distributions to more than \$4 billion. The order approving that was entered by the bankruptcy court yesterday. The team worked over the weekend to put in place the mechanisms with the cooperation of the CFTC and the CME, and the first distributions are expected to begin to be made tomorrow and to be completed within 2 to 4 weeks. All of this requires transfers to new accepting FCMs and is a complicated process. This will mean that retail commodities customers with U.S. positions will receive approximately 72 percent of their property.

The customer claims process is also up and running. Claim forms have been sent by mail, and forms are available on our website. Claims are being filed, reviewed, and as we meet here today, some claims have already been approved and allowed.

As part of my statutorily mandated duty, I am also investigating the extent of and reasons for the apparent shortfall in customer funds. The investigation is ongoing. It is led by the Department of Justice, also with the CFTC, the SEC, and we are cooperating fully in their investigation.

It is too early to make or draw definitive conclusions on many of the matters. At this time we do not know with certainty the extent of the potential segregation and compliance shortfalls, but I estimate the figure is not less than \$1.2 billion.

For U.S. futures, foreign futures, and for securities customers, there are three categories of segregated assets at MF Global Inc. for the customers. First, for those with U.S. futures positions, which is primarily under the jurisdiction of the CME, but there are also U.S. clients with substantial foreign futures positions. There are also securities customers who had segregated funds. The full amount of the shortfall will not be known with certainty until the claims process is completed.

I feel obligated to share these preliminary numbers and highlight the uncertainty that surrounds them. It is my hope that the shortfall number will come down.

We have collected the available assets from depositories that appear to be on the books of the debtor. This is not simply a mathematical calculation, but is the actual control of dollars. We also have estimated the potential claims, and that is how we calculate the shortfall figure.

No matter the final amount of the shortfall, it is an appalling situation. Its probable size is going to be significant, and this will substantially affect our ability to make a 100-percent distribution to former MF Global customers in the immediate term.

Exhaustive efforts to collect funds from U.S. depositories continue. Assets located in foreign depositories for customers who traded in foreign futures are a more complicated matter. They are now under the control of foreign bankruptcy trustees or administrators. We will pursue these assets vigorously, but recovery may be more uncertain and may take more time.

Thank you, Chairwoman Stabenow, Ranking Member Roberts, and other members of the Committee, for the opportunity to testify here today. You can be assured that amidst the unprecedented cir-

cumstances surrounding the failure of MF Global Inc., we are moving with speed and diligence to return customer property as quickly as possible in a fair and equitable manner that complies with the law.

Thank you.

[The prepared statement of Mr. Giddens can be found on page 128 in the appendix.]

Chairman STABENOW. Thank you very much.

Mr. Duffy, welcome.

**STATEMENT OF TERRENCE A. DUFFY, EXECUTIVE CHAIRMAN,
CME GROUP INC., CHICAGO, ILLINOIS**

Mr. DUFFY. Thank you, Chairwoman Stabenow, Ranking Member Roberts, and members of the Committee. I am Terry Duffy, executive chairman of CME Group.

Let me start by saying the actions of Mr. Corzine's firm, MF Global, put a lot of market users in a tragic position. At CME Group, our efforts with respect to the unprecedented loss of customer segregated funds caused by MF Global have been to assist these customers in minimizing market disruptions. My testimony summarizes efforts from our staff, who were on site at MF Global, along with the CFTC, in the days immediately preceding its bankruptcy. My written testimony expands on this introductory statement and includes substantial background material.

By the middle of the week of October 24th, MF Global had announced poor earnings and was downgraded by several credit rating firms, sparking rumors that it would sell its brokerage business. CME was the designated self-regulatory organization for MF Global with responsibility for auditing its futures business. On Thursday, October 27th, two of our auditors went to MF Global's Chicago offices to review MF Global's daily segregation report for the close of business on Wednesday, October 26th.

Wednesday's segregation report, which is not available until Thursday, showed full compliance. Our auditors asked for the material necessary to check the numbers on the report against the general ledger and third-party sources and began the process of tying out the numbers for Wednesday's report.

That substantial review process of the Wednesday segregation report continued on Thursday and Friday. MF Global's segregation report for Thursday, October 27th, which was delivered to CME on Friday, the 28th, also stated that MF Global remained in full compliance with segregation requirements. In fact, it showed that the firm held \$200 million in excess segregated funds.

On Sunday, the CFTC informed us that they were aware of a draft segregation report for the close of business for Friday, October 28th, which showed more than a \$900 million shortfall in required segregation. CFTC and CME staff and auditors returned to the firm on Sunday, October 30th, and were informed by MF Global employees that this discrepancy was caused by "an accounting error." Our auditors, working with the CFTC, devoted the rest of the day and night Sunday to find the so-called accounting error. No such error was ever found. Instead, at about 2:00 a.m. Monday morning, October 31st, MF Global informed both the CFTC and CME at approximately the same time that the shortfall was real

and that customer segregated funds had been transferred out of segregation to the firm's broker-dealer accounts.

After receiving this information, CME remained at MF Global while MF Global attempted to identify funds that could be transferred into segregation to reduce or eliminate the discrepancy. A CME auditor also participated in a phone call with senior MF Global employees wherein one employee indicated that Mr. Corzine knew about the loans that it made from the customer segregated accounts. CME Group has provided this information and the names of these individuals to the Department of Justice and the CFTC, who are investigating these matters.

On Monday, October 31st, the day the SIPC trustee took over, MF Global revised its segregation report for Thursday, October 27th, indicating that the alleged \$200 million in excess segregated funds should have been reported as a deficiency of \$200 million. This shortfall in segregation on Thursday, October 27th, was hidden by the inaccurate report, a telling sign to keep regulators in the dark. It remains to be seen whether this failure to disclose permitted additional segregated funds to be improperly transferred.

Throughout this time, the firm and its employees were under the direction and control of MF Global management. Transfers of customer funds effectuated by MF Global management for the benefit of MF Global constitute very serious violations of our rules and of CFTC regulations. We met our obligations to all other clearing firms and their customers.

Also, at all times we held \$1 billion in excess of the required amount of customer segregated funds on behalf of MF Global's customers. All of CME Group's efforts have been directed toward speeding customer access to their trading accounts, transferring their positions, and providing the trustee with a \$550 million guarantee from CME Group to encourage him to quickly release customer funds that were securely held at CME Clearing.

The federally mandated customer segregation program has been in place since 1936. In the time prior to the MF Global failure, no customer has ever lost its segregated funds because of the failure of a clearing member of the CME. Moving forward, we intend to work with the Congress, regulators, and industry leaders to strengthen customer safeguards at the firm level.

I thank you very much for your time and attention, and I look forward to your questions.

[The prepared statement of Mr. Duffy can be found on page 123 in the appendix.]

Chairwoman STABENOW. Thank you very much.

Let me start, Mr. Duffy, with your comments that you just indicated. You raised a serious allegation in your oral statement today regarding what Mr. Corzine may have known about customer accounts. You did not mention that in your written testimony, and you did not mention it in your testimony last week before the House Agriculture Committee.

This leaves us wondering why you are sharing it now, what you think it means, and I trust that CME has, in fact, shared this information in a timely way with appropriate Federal officials. And I would urge again everyone to cooperate fully with the investigations that are going on because, of course, anyone who is engaged

in wrongdoing must be held accountable. But would you want to respond further to that?

Mr. DUFFY. I would be happy to. Madam Chairwoman, I did not become—this information was not made available to me prior to my testimony last Thursday in the House. I received this information this past Saturday from an e-mail and a phone call from our lawyers, and they informed me of what they had found out in their investigations but did not share with me prior to the Thursday testimony.

Chairwoman STABENOW. And do you have the names of the specific people involved in terms of—you were speaking of hearing—people referring to things that they heard, but do you have the specific names that you have given to the authorities?

Mr. DUFFY. The names of?

Chairwoman STABENOW. Of those who were on the call and were involved in the conversation.

Mr. DUFFY. One of our folks from CME who is the one that reported this back to us was on a call, and you have to forgive me, I do not know this woman's name. If you do not mind, I will check with Legal.

Chairwoman STABENOW. I just want to make sure that you are reporting specific names of people in the discussions.

Mr. DUFFY. Yes. There is a specific name, yes, ma'am.

Chairwoman STABENOW. Okay. Mr. Duffy, in March of this year you testified before the Committee, pushing back on CFTC's effort to require more of exchanges and clearinghouses like CME when it comes to compliance and oversight. In fact, in March you said, "There is no evidence that this will be beneficial to the public or the functioning of the markets."

I wonder if you still believe that is true.

Mr. DUFFY. I do not know what you are referring to, what issue it was, ma'am. There were many issues—

Chairwoman STABENOW. Well, we were moving forward— CFTC was moving—you pushed back on the CFTC moving away from principles-based regulation, and I wonder if you still hold that view today.

Mr. DUFFY. Principles-based regulation has worked flawlessly, ma'am, and we do believe, even in this instance, that segregation funds still worked. What happened here was somebody went in, violated the rules of the CME and violated the rules of the Government, and transferred out customer monies into the broker-dealer account. That has nothing to do with the principles-based regulation, I believe, of the firm or the segregation of the firm. Someone violated the rules, in my opinion.

Chairwoman STABENOW. And so do you believe that CME has any responsibility as the front-line regulator—

Mr. DUFFY. If I did not think—what CME has done—and I was very much in favor of doing this—was to put up the guarantee of \$550 million so that the trustee could then issue money much more quickly back to the ranchers and farmers. And if you would like, I would be happy to give you the notes of why I did that. I asked that specifically for the farmers and ranchers, not for Wall Street, not for hedge funds, or any other of our clients. I said the most important constituency here needs to be made—to get the money back

quickly to them, are the farmers and ranchers. That is why the board of the CME Group put forth the \$550 million to guarantee Mr. Giddens so he can allocate his revenues.

Chairwoman STABENOW. As we go forward and looking to the future, this kind of thing—we all want to make sure that this kind of thing does not happen again in the future. Do you think the right kinds of questions are being asked of the futures commission merchants? Are we getting enough information to keep markets safe in order to be able to trade? And are you planning on reviewing your oversight systems in light of the MF Global bankruptcy?

Mr. DUFFY. Obviously, anytime something of this magnitude happens, which has never happened before—and I think Senator Roberts has pointed that out many times throughout the day—you want to look at different things. We are obviously open, as I said in my oral statement, to working with Congress and industry participants to see if there are any changes that need to be made for this not to happen. But I do think it is important that—you know, there is \$158 billion of customer segregated funds in the United States of America. This potential violation has never happened since this has been put into place since 1936. So I do not think that the system is broke. I think someone violated the rules, ma'am.

Chairwoman STABENOW. Thank you. And now for a moment let me talk about customer money, which brings us all here and is our concern. I want to thank you, Mr. Giddens, for your efforts and your team's efforts and encourage you to continue to move as quickly as possible to make people whole.

I am concerned that we are hearing that there may be a shortfall in customer money. Even with this latest distribution, we know that people will not be yet getting 100 percent of their funds. And with that in mind, I think it is important to talk about what happens next. And so I would like each of you to answer a couple of questions.

Do you agree that any value left in MF Global should first go to customers until they are made whole? And to put it another way, creditors and investors should not get a single penny until MF Global's customers have been paid in full. And I am wondering if each of you would agree with that. Commissioner Sommers?

Ms. SOMMERS. Thank you, Chairman Stabenow. I think that it becomes a little complicated when you are talking about the bankruptcy of MF Global Holdings, the parent company. If we have evidence to show that there is customer money at the holding company level, then absolutely we will do everything we can to make sure that money comes back to customers and to the estate. We will be working closely with the trustee to make sure that happens.

Chairwoman STABENOW. Okay. Mr. Giddens, would you respond to that?

Mr. GIDDENS. Yes, I agree that both the Commodities Exchange Act and the Securities Investor Protection Act give a priority to customers, securities customers and commodities customers, respectively, and if there is a shortfall, there are provisions in both statutes which say that other assets ought to be reached to cover those shortfalls. That may be deemed by some to be something of a conflict, and the positions of the CFTC and the SEC may disagree. But both statutes, if there are shortfalls in customer prop-

erty in either category, commodities or securities, give a preference and have a mechanism for a trustee to seek to recover for an estate assets which should have been in segregated funds.

Chairwoman STABENOW. Mr. Duffy?

Mr. DUFFY. I am not a trustee nor a regulator, but I believe that there is SIPC insurance on the broker-dealer side. There is what we call “segregated funds” on the FCM side. I do believe that the FCM clients should be first in line in front of all other participants, including bond holders and everybody else.

Chairwoman STABENOW. Thank you. Thank you very much.

Senator Roberts?

Senator ROBERTS. Well, thank you Madam Chairwoman.

Mr. Duffy, we have spent a lot of time here today. We probably should have had you on first. You have sort of tossed a bomb here right in the middle of who we are trying to find out who is responsible, who has the responsibility, who has the authority. So senior MF Global employees told one of your auditors—you were about ready to give us the name of that auditor. Why don’t you just supply that to the Committee, if you might? I think you were going to turn to one of your attorneys, and we will leave it at that, unless that jeopardizes any ongoing investigation. We will let you decide that with law enforcement.

October 31st, Governor Corzine was well aware of loans that MF Global had made to other MF Global affiliates. Is that correct?

Mr. DUFFY. Sir, I am reporting back to you everything that I know that was told to me. I was not there, sir, but in our interviews with our employees, our employee told us that they were on a phone conversation with this particular person at MF Global that Mr. Corzine was aware of the loans that were being made.

Senator ROBERTS. Did that employee indicate with MF Global affiliates the MF Global customer segregated account funds were transferred to?

Mr. DUFFY. Not to my knowledge; I do not know that. I believe what they were trying—if I recall the e-mail, it was something of a \$175 million loan that was made to a European affiliate of MF Global, if I am understanding it correctly, if I remember correctly.

Senator ROBERTS. Did they indicate when those loans were made?

Mr. DUFFY. I do not recall when they were made. I believe it was in the last couple days prior to bankruptcy.

Senator ROBERTS. Did this individual indicate when Governor Corzine became aware of those loans, or did he order them to occur?

Mr. DUFFY. All I was told was that Mr. Corzine was aware of the loans that were made.

Senator ROBERTS. Did you provide this information to the appropriate authorities? The answer, of course, to that is yes.

Mr. DUFFY. Yes, sir.

Senator ROBERTS. Is there anything else about this conversation you believe important for this Committee to know?

Mr. DUFFY. No, sir. I was just asked to raise my right hand and tell the whole truth, so I am telling you what I know.

Senator ROBERTS. I appreciate that.

Commissioner Sommers, it is my understanding that CFTC can create advisory boards composed of industry officials. Is that correct?

Ms. SOMMERS. Yes, Senator.

Senator ROBERTS. Has the CFTC considered setting up an advisory committee like this to focus on what happened with MF Global and to help make recommendations to ensure it does not happen again?

Ms. SOMMERS. We have had a number of different conversations of what an appropriate forum would be moving forward so that we can hear from industry participants and get their feedback on lessons learned.

Senator ROBERTS. Has anybody stopped you or recommended otherwise?

Ms. SOMMERS. No. I do not think we have had discussions that have taken it to the Chairman's level. It has just been internally with my office and industry participants.

Senator ROBERTS. Well, he is not participating. Is that not correct?

Ms. SOMMERS. That is correct.

Senator ROBERTS. Well, I would strongly encourage you to set that up, and I encourage you to make that recommendation to the Commission and to pursue it. And since Chairman Gensler is not participating and has stated before the Committee last week he does not know exactly what happened with MF Global, those recommendations should be given to you as the lead investigator and that you and the other Commissioners should make a determination on whether or not those recommendations should be pursued.

Let me say that—let me get organized here. Mr. Duffy, again, beginning on Monday, October 24, the day of the Moody's downgrade, you have said that CME began heightened scrutiny of MF Global. What does this entail, very briefly?

Mr. DUFFY. Well, we were in there—

Senator ROBERTS. Mic.

Mr. DUFFY. Sorry, sir. We were in there to make certain that the segregated reports were accurate. As I said in my oral testimony, we were—they were on daily segregated reporting I believe since they were—since Refco, since Refco went away and MF Global took them over. So we were in there just making certain that the monies were tying out, as I said, and we had got about 85 or 90 percent done through Friday through the week on tying out the customer segregated funds.

Senator ROBERTS. Commissioner Sommers, did the CFTC participate or assist in this more intensive review?

Ms. SOMMERS. The CFTC staff went into MF Global mid-week—I think the 26th was a Wednesday—under the same sort of review to make sure that the daily segregated reports were accurate.

Senator ROBERTS. Under the heading of what you were looking for, wasn't the primary purpose of your intensive review to make sure that the segregated customer accounts were not dissipated or otherwise misused?

Ms. SOMMERS. That is correct. We—

Senator ROBERTS. Mr. Duffy?

Mr. DUFFY. Yes, sir.

Ms. SOMMERS. We received daily segregated reports from MF Global, but in the normal course of business do not tie those back to bank records. So that is what we were in the process of doing.

Senator ROBERTS. Did you suspect that the customer funds might go missing?

Ms. SOMMERS. No, sir.

Senator ROBERTS. I understand that you were not in charge of MF Global's investigation at this time, but you have since learned whether or not the CFTC participated in this review or otherwise confirmed the CME's conclusion that all the customer money was safe at the close of business on Wednesday, October 26th. Is that correct?

Ms. SOMMERS. That is correct.

Senator ROBERTS. It is my understanding Chairman Gensler would have been the lead at that time on all MF Global-related issues because he did not become non-participating until 8 days later. Is this correct, as to your understanding?

Ms. SOMMERS. That is correct. I took over on November 9th.

Senator ROBERTS. I see. I think I am down to 37 seconds, and we have the Senator to my right who is waiting patiently. So I may ask a couple more questions, Madam Chairwoman, but I think I will yield back at this time.

Chairwoman STABENOW. Thank you very much.

Let me talk for a little bit more about customer funds and ask each of you another issue that I think, as we look at going forward, we are going to be asking a lot of questions about additional authority from Congress in terms of putting customer funds first in processes.

It is possible during the days, perhaps even the weeks and months, that led up to the firm's collapse that there were third parties who saw it coming, and perhaps they were well within their legal rights to do so. But if third parties held back money or assets to keep them out of a lengthy and uncertain bankruptcy proceeding, should the court be able to reclaim that money for MF Global customers? Commissioner Sommers?

Ms. SOMMERS. I guess my understanding of the way that would work is if that money belonged to customers or belonged in the 4d account, then absolutely that would be able to come back to the debtor's estate. I am not aware of money with third parties or aware of whether or not that was money that belonged in the 4d account.

Chairwoman STABENOW. Mr. Giddens?

Mr. GIDDENS. We are looking at all the transfers for several months out of the firm, and if there is a legal basis for recovering that, we will make a demand, and we will also engage in litigation if we have a sound basis for that.

We are in the process of collecting from counterparties of MF Global Inc. who principally closed out all open transactions after the bankruptcy for an accounting of whether they lost money or made money; and if they owe money to the estate, we will pursue that.

There is nothing to indicate, unfortunately, the amounts, based on our analysis of the books and record, are going to be astronomical or anywhere nearly sufficient to make up the shortfall. But

part of my duty as a trustee is to pursue causes of action to recover assets for customers, and we intend to do that.

Chairwoman STABENOW. Thank you.

Mr. Duffy?

Mr. DUFFY. I would have nothing more to add than what Commissioner Sommers already said.

Chairwoman STABENOW. Okay. Thank you.

Mr. Duffy, some have suggested that CME should make whole the customers of MF Global right now and take over the claims. Would you consider that kind of an idea?

Mr. DUFFY. As I said, we have put up money to encourage the trustee to pay back. I also said there was \$158 billion of customer segregated funds in the United States. Nobody can guarantee \$158 billion. You know, that is why there are rules on the books, and that is why we have disclaimers to make certain of what FCM you are going to do business with because there is a risk. So, again, Madam Chairwoman, that would be something that would be an extreme moral hazard for the CME to try to make up \$158 billion of customer segregated monies.

Chairwoman STABENOW. You mentioned earlier on the securities side that there is SIPC, there is an insurance system. And it is a little early, I think, probably to spend too much time—we are not sure where all the recommendations are going to go, but one question that we have been asked a number of times is: Should there be an insurance system like that is on the commodity side for commodities customers? Do you have any thoughts on that?

Mr. DUFFY. I think you are talking about trying to have an insurance system that would be in the hundreds of trillions of dollars of notional value to insure. The premiums would be so astronomical it would never meet the payout of what it could be. So I do not know that is something that would be beneficial. There may be something you want to look at and, again, preliminary at best, smaller farmers, ranchers, pure hedgers of the product, they may want to look at different types of accounts for them that could be managed differently. I do not know.

Chairwoman STABENOW. Okay. Thank you.

Commissioner Sommers, Chairman Gensler testified at our last hearing that the CFTC did not examine a single futures commission merchant, referencing the duty of the front-line regulators like the CME. Can you confirm that information? And should the Commission audit or examine every futures commission merchant? If we are to go down that path, does the CFTC have enough resources to do that? I think I probably know the answer to that one, but is that a path that the CFTC is looking at or would look at?

Ms. SOMMERS. So currently the way it works, we have authority over the DSROs. The FCMs are registered with us, but the DSROs are the front-line auditors. We do periodic reviews of the DSROs and look at the reviews or the audits that the DSROs do of FCMs. So we may go in and do spot audit checks of FCMs that a DSRO has already reviewed to see what our own results would be of that type of audit to make sure that the DSRO is doing their job. If we find any inadequacy in the job that the DSRO has done, we make recommendations to them to improve their systems.

Chairwoman STABENOW. After this investigation is done, are you open to recommending new authorities or tightening up current protections to prevent a similar situation from occurring again?

Ms. SOMMERS. Absolutely. I think there is no doubt that after the investigation is concluded and we look back to know exactly what happened, there will be a number of lessons learned and a number of different recommendations that we can bring to you for your consideration.

Chairwoman STABENOW. Is it true that if a firm invests customer money right now and the investments decrease in value, the firm is responsible for the loss, not the customer?

Ms. SOMMERS. That is right. If the firm is investing under Regulation 1.25 and there is a loss in value of those instruments, the FCM has to make up the loss of customer money.

Chairwoman STABENOW. Thank you very much.

Senator Roberts?

Senator ROBERTS. I beg the indulgence of my colleagues. CME has said in the last few days, Mr. Duffy, of MF Global it saw several transactions that “did not follow a straight path.” What did you mean by that?

Mr. DUFFY. I am not aware of that exact quote, “did not follow a straight path.” It may be in my written testimony, but I am assuming—no, it is not in my written testimony. I did not think it was. I do not recall hearing anything about following a straight path.

Senator ROBERTS. I wonder where that came from.

Mr. DUFFY. The only thing I can say, sir, is I did say that they gave us a segregated report that showed \$200 million to the good, and then they gave us the same segregated report 4 days later, dated from the week before, that showed a \$200 million deficiency. So maybe that is where that language came from.

Senator ROBERTS. Well, then you saw several transactions that followed a very rocky path.

Mr. DUFFY. Fair enough.

Senator ROBERTS. On November 2 in a press release, you said, “It now appears that the firm made subsequent transfers of customer segregated funds in a manner that may have been designated to avoid detection insofar as MF Global did not disclose or report such transfers to the CFTC or CME until early morning on Monday, October 31.” How was this information disclosed to you by MF Global?

Mr. DUFFY. I will go back to what I said a moment ago, Senator. That press statement that we put out, a lot of it was based on the false segregated reports that we received and now we are aware of.

Senator ROBERTS. What exactly did MF Global tell you?

Mr. DUFFY. I was not there, sir. Obviously, this was 2 o'clock in the morning. I found out about it 8 o'clock the following morning. I was only told that they came to us and the CFTC saying, “Stop looking for the so-called accounting error. There was \$950 million transferred out of customer segregation to the broker-dealer account.” That is what I was told from our—through our reports.

Senator ROBERTS. Was this before or after the company had been placed into bankruptcy?

Mr. DUFFY. This was prior to. I think the company went into bankruptcy the following day—or actually it would have been the same day.

Senator ROBERTS. Well, for the entire panel—I am sorry?

Mr. DUFFY. It would have been the same day because it happened in the middle of the night.

Senator ROBERTS. It seems to me that to figure out where the money went, once you go back to the time when one knew for sure that the money was there, try to trace its path forward in time—it is time-consuming, it could be done. And that would take quite a number of people. I understand the Department of Justice is involved in the investigation, locating the money through the FBI and through the offices of two U.S. Attorneys. CME has its own auditors, of course, and the CFTC is directly involved.

Mr. Giddens, as trustee you have got your own team. It seems to me there are a lot of cooks in the kitchen. Who is in charge of this posse that we have arranged here to find out the truth? Are there too many members of the posse that you have not been able to find the money? Or are you satisfied that you are all talking with one another and it is a pretty smooth operation?

Mr. GIDDENS. I think it is a very cooperative operation. The potential law enforcement investigation is led by the Department of Justice and the U.S. Attorneys in New York and Chicago, and they are taking the lead on that.

My principal investigation is really to look at the transfers and try to find potential sources of recoveries to bring back the monies for customers. I do not have a role in the law enforcement aspect of this. There are frequent meetings, and there is cooperation, full cooperation from us. No one is asserting privilege or withholding any kind of information. And I think it is working well with the CFTC.

Now, the SEC also is interested in this because there were transfers and transactions relating to segregated securities accounts and the like. I think all of the independent regulators—I do not think bodies are stumbling over bodies or there are too many people to be there.

I think in terms of a conclusion of what happened, it is a complicated analysis, and I think it is fair to say it is more than just looking at transactions in the last few days. I think it is looking, whether it is relevant or not, for transactions and transfers that went over several months and are really hundreds of thousands of reconstructions of things to do.

As I indicate, there is no magic source of where the money is. There is no depository, there is no counterparty or anyone who is sitting with, you know, \$600 million that we have identified. I do not think that is going to happen. I think we have collected the available assets, and we have already distributed nearly 80 percent of that with our—we have other constituencies. With the last transfer motion, there were more than 25 objections, including objections from the U.K. administrator, including from the creditors committee of the holding company who were opposed to our distribution on the grounds that we may be distributing assets which belong to other creditors or other parties.

So as I say, I think the analysis of the business practices of the firm and whether they were solvent or insolvent is going to take some time. But I do not think it is going to magically come to a pot of gold at the end of the rainbow immediately.

Senator ROBERTS. I appreciate your candor, and I think Mr. Duffy has something to add.

Mr. DUFFY. Senator, I just want to make it clear that the CME is obviously cooperating with the authorities, but also the CME has been instructed by both the CFTC and the Department of Justice not to conduct its own investigation. All the information I have given you is by interviews that we have conducted internally of our own employees. So I just want to make sure that was clear for the record.

Senator ROBERTS. I appreciate that.

I yield back, Madam Chairwoman.

Chairwoman STABENOW. Thank you.

Senator Klobuchar?

Senator KLOBUCHAR. Thank you very much, Madam Chairman. Thank you to all of you.

Mr. Duffy, I was actually asking Mr. Corzine and MF Global witnesses about the statements that you had made and your understanding of what had happened. And in your testimony you give what I would consider the most detailed account I have heard to date as to when and how the customer funds were missing. From your testimony do I correctly understand that it is your belief that the customer funds were illegally transferred out of segregation on October 27th, Thursday, and Friday, October 28th?

Mr. DUFFY. We were told that the customer funds were transferred from the customer segregation to the broker-dealer, and those are not excess customer funds. That is a violation of the rules. So, yes, that is correct.

Senator KLOBUCHAR. And then this new information we got today, I just want to go over that. Was that one of those transfers or is that from another—this loan, \$175 million loan to the European affiliate?

Mr. DUFFY. I am unaware of what it was other than what I was told over the weekend by our lawyers by an e-mail and a conversation afterwards that Mr. Corzine was aware, because our employee had heard this, talking to another—was on the phone with the European affiliate, and the European affiliate—they were telling them to send back the \$175 million, and the woman said that Mr. Corzine is aware of these loans.

Senator KLOBUCHAR. And this was a woman at MF Global?

Mr. DUFFY. MF Global, yes.

Senator KLOBUCHAR. And who is this woman?

Mr. DUFFY. I do not have her exact name, and I do not want to—

Senator KLOBUCHAR. All right. And so—

Mr. DUFFY. I told Senator Roberts I will give it to the Committee afterwards.

Senator KLOBUCHAR. Okay. Very good. And so she told an auditor with CME about this?

Mr. DUFFY. Yes, the auditor of CME was in the room while she was on the phone.

Senator KLOBUCHAR. And it was a \$175 million loan to what European affiliate?

Mr. DUFFY. I have no idea, ma'am.

Senator KLOBUCHAR. Okay. And then I know that Senator Roberts just asked you about that, but in your testimony, you said the transfer of segregated funds—this is a quote: “The transfer of segregated funds out of the appropriate accounts was disguised from all regulators.” And I actually engaged a little in the previous panel about disguising and what they are required to do with the disclosures and the repo disclosures and those kinds of things. Can you explain further why you chose to use the word “disguised”?

Mr. DUFFY. Sure. Because as I said in my testimony and to Senator Roberts, we were tying out—which means that we were validating the segregated funds—from Wednesday’s statement through Thursday and Friday; we had 80 to 90 percent of the tie-out done to show that segregated funds were basically intact. This is on Friday, but it is based off of Wednesday’s report.

Then they gave us another report. First, the report showed they had—their report showed \$200 million in excess. And then they gave us another report 4 days later after bankruptcy with the same date prior that shows a \$200 million deficit. So, clearly, they gave us two different reports from the same day with a \$400 million swing, and we had tied out 80 to 90 percent of the funds being there on Friday from Wednesday’s report.

Senator KLOBUCHAR. So this is a different issue then when I talked to him about the reporting to the SEC about where the funds went. This is during this weekend that you are talking about.

Mr. DUFFY. Yes. I am talking about this work was being done on Thursday or Friday off of Wednesday’s report, and then the report that they gave us was revised on Monday.

Senator KLOBUCHAR. Okay. Mr. Duffy, in your testimony you stated that, according to the information you have, you believe that there might be a shortfall in segregated funds of between 13 percent and 19 percent. Has that changed at all or is it more defined?

Mr. DUFFY. Well, I do not know about the percent. I am going off dollars, so I know.

Senator KLOBUCHAR. Yes, I wondered where that rested with the \$1.2 billion figure that Mr. Giddens and his team—

Mr. DUFFY. We are estimating a shortfall of between \$700 million and \$900 million.

Senator KLOBUCHAR. Okay. So that is less—

Mr. DUFFY. So that is, you know, \$550 million is 10 cents, so you can do the math from there.

Senator KLOBUCHAR. Okay. Mr. Giddens, for this difference, what is this difference about between what Mr. Duffy—

Mr. GIDDENS. There are three segregated funds. I think Mr. Duffy is referring only to the U.S. futures when he gives his figure of up to \$900 million. I am also referring to the segregated accounts with foreign futures and also segregated securities accounts.

Mr. DUFFY. For the record, ma'am, I am referring to U.S.

Senator KLOBUCHAR. Got it. And then, Mr. Giddens, I know this was incredibly complicated and I guess there was some poor maintenance of the records in the last few days. Are you confident that

at the end of the day you are going to be able to account for all the transactions in and out of segregation from start to finish?

Mr. GIDDENS. Well, that is what we are trying to do over a several-month period, and I have very good folks working for me from Deloitte and Ernst & Young who are trying to reconstruct this.

Senator KLOBUCHAR. And so what I understood from reading your previous testimony, something like 72 percent of the money will go back to people like Mr. Tofteland for sure that are victims of this colossal collapse here.

Mr. GIDDENS. Yes. The Commodity Exchange Act requires me to give the same pro rata distribution to every customer, and after this distribution, each customer should have received 72 percent of the value in their account.

Senator KLOBUCHAR. All right. And how about above that? Under what circumstances could customers who had their funds in segregated accounts not be made whole?

Mr. GIDDENS. If we continue to have a shortfall in total assets. It is my intention to make further distributions through the claims process as promptly as possible, and it depends on the total recovery of assets that we have. If we have only the assets we have at present, there will be a shortfall. And it is my goal or aspiration through litigation or otherwise, if possible, to make up that shortfall.

Senator KLOBUCHAR. With the clawback or finding some ways to find this money?

Mr. GIDDENS. Yes.

Senator KLOBUCHAR. Okay. And so what do you see as the timetable now? You have got that distribution of the 72 percent, and you have determined what the shortfall is. So what should we tell our farmers?

Mr. GIDDENS. Well, the time for filing claims expires on January 31st, and by that time we should have a picture of all the claims. We have just an estimate.

For example, a U.K. administrator had an account with MF Global U.S. of several hundred million dollars in an omnibus account. We have not distributed anything on that.

There are also other subsidiaries around the world. There are also other potential creditors. And until the claims process is completed, we will not know with assurance what the claims are. But we have and we are very grateful for the CME guarantee because that has given us some assurance that we could proceed with fairly substantial distributions without knowing in reality what our total assets are and what the total claims will be allowed.

Our intention is to do that as quickly as possible and to make further distributions as quickly as it appears comfortable to us, to the CFTC, and, of course, eventually we have to persuade the bankruptcy court to approve these transfers in the interest of all the parties in the bankruptcy.

Senator KLOBUCHAR. Thank you very much, and I know I have talked with you, Commissioner Sommers, before, and if we have any more questions, especially about that timetable, we will follow up in writing. I appreciate it.

Thank you.

Chairwoman STABENOW. Thank you very much.

Senator Boozman?

Senator BOOZMAN. Thank you, Madam Chair.

Mr. Duffy, did you get a chance to hear the testimony of Governor Corzine and his associates?

Mr. DUFFY. I did.

Senator BOOZMAN. Was the testimony that you heard consistent with the facts that you have uncovered in your investigation?

Mr. DUFFY. I am not a lawyer, sir. The only thing I can tell you is we were told by MF Global that they transferred money from customer segregated accounts to the broker-dealer, stop looking for the accounting error.

I can also only tell you that one of our employees was on a call with one of their employees when they said Mr. Corzine was aware of the loans being made from segregated accounts.

Senator BOOZMAN. Okay. Very good.

Ms. Sommers, again, it is remarkable. You mentioned Lehman Brothers and things like this. Is this unique, this sort of thing happening, certainly to this extent? But is it unique in itself?

Ms. SOMMERS. Yes, it is, sir, for the customer funds to be missing.

Senator BOOZMAN. Okay. You mentioned customers. How do we differentiate between what is and what is not customer dollars?

Mr. DUFFY. The customer funds on the FCM side would be put in a 4d segregated account, and those accounts would be tagged as 4d segregated accounts.

Senator BOOZMAN. And the money that they discovered outside?

Ms. SOMMERS. There could be money in a lot of other accounts outside of 4d. There could be house proprietary accounts, broker-dealer accounts, the foreign future accounts, which we take at 30.7 accounts.

Senator BOOZMAN. Okay. Very good.

Mr. Giddens, the \$550 million guarantee, is that money—is it going to be used to make customers whole if we cannot find the shortfall?

Mr. GIDDENS. That is not the nature of the guarantee. The guarantee, which we are grateful for, is not a sum of money or an additional sum of money. If we make the mistake and it turns out at the end of the day the proper pro rate distribution is 75 percent and we have given out 80 percent to somebody or to others, the money could be used to cover that deficiency. So Mr. Duffy may—

Mr. DUFFY. That is not quite correct either. What is correct is CME has said to the trustee, Pay up to 75 cents for every dollar, and if you end up only having 60 cents or 65 cents, we will make up to 10 cents. So we do not go above the 75-cent number, as Mr. Giddens was referring to. Maybe we are saying the same thing in a different way.

Mr. GIDDENS. I think we are.

Mr. DUFFY. But it is basically CME—if he pays up to 75 cents, finds out he does not have 75 cents, has 70, then we pay \$250 million to him. If he has 65, we pay another \$250 million to him. If he has 60, he is on his own after that.

Senator BOOZMAN. I see. Okay. Thank you, Madam Chair.

Chairwoman STABENOW. Thank you.

Senator Hoeven?

Senator HOEVEN. Thank you, Madam Chairman.

I would like to start with Mr. Duffy. Would you feel that it is fair to say that either customer money was moved from segregated accounts to the company accounts for use by the company or there is an accounting error here or we are going to find the dollars? Would you say it is fair that one of those three scenarios needs to—either is the case or will be the case?

Mr. DUFFY. I do not know if I could say that because I can only tell you what I have been told, sir. We were told—not me personally, but our staff was told there is no accounting error. So I have to take that off the table. I was told there was money moved from customer segregated funds to the broker-dealer account. That is what we were told.

Senator HOEVEN. You indicated \$200 million?

Mr. DUFFY. No, sir; \$950 million was moved out of customer segregated accounts to the broker-dealer. What I was referring to on the \$200 million was a customer segregation report from the week prior that showed them having excess of customer monies, \$200 million of their own monies in the segregated pool. And then that was revised down to be a \$200 million deficit a week later or 5 days later.

Senator HOEVEN. So your auditors indicated that the dollars were transferred from the customer segregated accounts to the firm's accounts?

Mr. DUFFY. No, sir. Our auditors were told by MF Global that is what MF Global did, to stop looking for the accounting error.

Senator HOEVEN. What authority did they have to make those transfers?

Mr. DUFFY. I do not know if they were the ones that made the transfers or not, sir. All I am telling you is they told our auditors stop looking for an accounting error, they moved the money out of segregation.

Senator HOEVEN. And that was on what date?

Mr. DUFFY. October 31st, 2:00 a.m. in the morning.

Senator HOEVEN. So would it be your expectation that the investigation led by the DOJ in tandem with your help, the CFTC, the SEC, the trustee and everyone involved here, that they would then be able to determine the amount that was transferred, when it was transferred, who authorized the transfers?

Mr. DUFFY. We have given them pretty much all the information we had, sir. We were not part of the investigation. We have been asked not to be by both the CFTC and the Department of Justice.

Senator HOEVEN. Based on your earlier testimony, you felt that this was not a system failure but, rather, that somebody violated the system.

Mr. DUFFY. There is somewhere between \$700 million and \$1.2 billion, to Mr. Giddens' recollection. It is literally 6 or 7 weeks later. The money is not there yet. So the money appears to be missing.

Senator HOEVEN. Commissioner Sommers, would you give me your thoughts on the same issue, system failure versus somebody violating the rules, and then also your sense of how soon we will be able, through the investigative process, to determine what happened, who is accountable?

Ms. SOMMERS. The first part of the question: I think it is a little bit premature for us to make determinations about whether the system failed until we know exactly what happened. After we have a chance to go over all the facts and circumstances of the case, obviously we can decide whether or not there were any parts of the system that failed in this instance.

The second part of your question, how long it may take to follow the trail, just to assure the Committee that we will follow, you know, every single lead in this investigation, both the law enforcement side of the investigation as well as tracing where every penny of the money went, but it is complicated. And while you may know that a certain amount of money could have been transferred out of the FCM at one time, that money being transferred could have splintered into thousands of different accounts after it was transferred out of the FCM. And we have to trace to make sure which of those transfers were legitimate versus illegitimate transfers.

If a customer on the FCM side had money that they asked to be transferred to the broker-dealer, that would be a legitimate transfer, and we would have to follow any supporting documentation that is with MF Global to know which of those transfers are legitimate versus illegitimate. So while we have a very good idea at this point about what had happened, it is painstakingly difficult and complex to follow every single transfer of this money.

So, you know, we are working closely with the trustee and the forensic accountants to make sure we get every single detail unveiled.

Senator HOEVEN. Mr. Duffy?

Mr. DUFFY. You know, Senator, maybe I did not answer your question properly, but I believe I am the only one in two hearings now that is giving a timeline of sequence of events that we know. I do not believe it is a system failure only because of the timeline we have walked through.

Then when the question was asked today to the earlier panel—I think Senator Boozman asked me a question, was I paying attention to the other panel. When the Senator from Minnesota asked was my statement correct that they were told that monies were transferred out of customer segregated into the broker-dealer account, nobody refuted that of the three participants that I saw.

So we are the only ones that have shown a timeline. I do not believe there is a system failure here. So maybe I did not answer your question properly. I think something—I think there was a violation of the rules. Again, I am not a judge, jury, or lawyer. I am just telling you we gave a chronological order of events here, sir, to show that it is not a system failure.

Senator HOEVEN. I understand you are saying that you do not feel it was a system failure, which I think means that either transfers were made inappropriately or there is an accounting error. But you indicated that you were told it was not an anything error, that transfers were made.

Mr. DUFFY. That is exactly what I said, sir.

Senator HOEVEN. Mr. Duffy, in terms of the ability to recover—because some of the earlier testimony was, well, this may be an accounting error. And certainly there should be controls in place so you do not have this type of accounting error, which is, you know,

properly part of the system. But whether it is accounting error or whether there were unauthorized transfers, Mr. Giddens, will that affect, in your opinion, the ability to get full recovery for the customers of MF Global?

Mr. GIDDENS. If it were simply an accounting error, then presumably it could be corrected and you would have the funds. We are basing our analysis on what actual dollars are there against estimated claims, and there is a substantial shortfall. I should say while the technical investigation by the Department of Justice will be thorough, and by the regulators, it may take months, that is not going to deter us if we see a source of funds that we think should come back into the estate from pursuing that. In fact, we have already made demands of counterparties who closed out transactions for accountings into—and, in fact, we have recovered some small amount of money.

So what I am saying is we will be proactive immediately, and even though the investigation in its formal sense may take many months before anybody can unravel the thousands if not hundreds of thousands of transactions—and we will be doing all we can as the members of this Committee have encouraged us to do to pursue dollars to make people whole—I am certain that the distribution will be more ultimately than 72 cents. How much I cannot really say at this point.

Chairwoman STABENOW. I think that is a good place to end—yes?

Senator HOEVEN. I do have a follow-up question. I can wait or—but I would like to have a follow-up question.

Chairwoman STABENOW. We do have—we are needing to bring the hearing to a close. I wonder if you might either do that quickly or put it in writing.

Senator HOEVEN. Just one more to follow up.

Chairman STABENOW. Very quickly.

Senator HOEVEN. For Mr. Giddens, \$1.2 billion is the shortfall. You anticipate—just take me through the math real quick so that we can communicate with folks who are out the money. The Senator from Minnesota talked with you about the timeline, but just take me through the number, the \$1.2 billion, you anticipate 72 percent recovery. How much of that is paid out? When do you expect more payout? And then are we talking about the difference of roughly \$300 million is what you anticipate the shortfall to be at this point?

Mr. GIDDENS. No, Senator. We will have distributed \$4.2 billion. The bankruptcy court entered the order on Monday, and with the CME and with the CFTC, we have put in place a mechanism to start making distributions, and actually the first distribution should go out tomorrow. That process will take, estimated with the CME, 2 to 4 weeks before all of the money is out.

When that is completed, that distribution should give every person 72 percent of their claim. If their claim were for \$1 million, they should get \$720,000. The shortfall, the \$1.2 billion, is an estimate, and that is based on what we see as estimated claims against three segregated pots: one for securities customers; one for the U.S. folks who transacted in foreign futures, such as on the London Metals Exchange; and then the largest pot of that, which is under the CME jurisdiction, are U.S. futures. The combination

of those three pots of assets, what we actually have and what we have collected, is what leads us to the approximate \$1.2 billion.

Senator HOEVEN. Thank you.

Chairwoman STABENOW. Thank you very much, and we thank all of you for coming today. This has been a very, very important hearing, and we have received answers. Also, I have more questions. And so as I indicated in my opening statement, we have three goals as we continue to look into this situation: getting the customers' money back, and, Mr. Giddens, we are counting on you to stay laser-focused on that, as I am confident that you will; holding anyone accountable for any wrongdoing; and ensuring that proper customer protections are in place to make sure this does not happen again.

I will just reiterate that any policy changes will come through this Committee, and we will continue to examine the collapse of MF Global. And we have heard today from customers who are very worried about using the futures markets, and that is, frankly, not acceptable. It is the duty of our Committee and all of you and the regulators to ensure that the markets are safe and sound and that there is, in fact, confidence in the system. And so we look forward to working with you to make sure that happens.

Thank you very much. The meeting is adjourned.

[Whereupon, at 5:03 p.m., the Committee was adjourned.]

A P P E N D I X

DECEMBER 17, 2011

Statement of Bradley Abelow

**United States Senate Committee on
Agriculture, Nutrition and Forestry**

December 13, 2011

The bankruptcy of MF Global was a tragedy for our customers, our employees and our shareholders. For many of our customers, including many of your constituents who have still been unable to retrieve funds that are rightfully theirs, it has imposed extreme financial hardship. More than 2,500 employees have either already lost or will soon lose their jobs through no fault of their own. Shareholders have seen the value of their investments reduced to almost nothing overnight.

As the President and Chief Operating Officer of MF Global Holdings, I am deeply sorry for the hardship they have all endured. While I know nothing I say can ease their pain, I hope that through my testimony today, I can help this committee understand what happened at MF Global and how we are attempting to unwind the company in a manner that provides maximum value for all parties.

I joined MF Global in September 2010 as COO. I was given the additional title of President in March 2011 and served in that capacity through the bankruptcy filing this October. After the filing, the firm's board asked me to remain in my position to work with the various trustees and administrators to close the firm's operations, which I have attempted to do over the last six weeks.

From my perspective, based on what I was able to observe at the time, there were a number of factors that led to MF Global's demise. First, it appeared that by

mid-October of this year the market had become increasingly concerned with the firm's exposure to European sovereign debt. Second, beginning in late October, the ratings agencies rapidly and repeatedly downgraded the firm's credit rating. Third, the company reported disappointing earnings on October 25. The combination of those three events – increased concern about exposure to European sovereign debt, a series of ratings downgrades, and disappointing earnings – created an extremely negative perception in the market resulting in a large number of the firm's trading and financing counterparts pulling away from MF, which dramatically reduced the firm's liquidity. That reduction in liquidity – a classic run on the bank – led MF Global to attempt to sell all or part of the firm in order to provide liquidity and protect the interests of our employees, shareholders, creditors and customers. When those efforts failed, MF Global filed for bankruptcy on October 31.

I know this committee is interested in finding out what amount of segregated client funds went missing in the final days, how it happened, where those funds are, and what might eventually be returned to the firm's clients. I am deeply troubled by the fact that customer funds are missing, and I can assure you that I share your interest, and the public's interest, in finding out exactly what happened. At this time, however, I do not know the answers to those questions. They are being investigated by the trustees, who have taken over management of MF Global and have control over its records and accounts, and a host of regulatory and investigative agencies. While I do not know what they have found, I do know that all of the parties are working hard to find answers, and I hope they are able to get to the bottom of the issue as soon as possible.

Since the company filed for bankruptcy, I have focused every day on minimizing the effect on customers and employees. There is no way to turn back time and undo all of the damage caused by the collapse of MF Global, but in the last six weeks, I have worked day and night to reduce costs and maximize the remaining value in the business.

Because MF Global was a global firm, with operations on exchanges in more than 70 countries, there are separate entities with separate systems and books around the world, and I have worked to foster cooperation and communication among those entities. There are a number of different parties now responsible for unwinding the firm's operations and it has been an enormous effort to coordinate with them to generate the maximum possible recovery of assets.

And while it is only a small measure given the number of people who have lost their jobs, I am doing whatever I can to help former employees find new employment.

I believe it is important to examine the issues that led to MF Global's demise, and the firm has attempted to be as open and transparent as possible. I hope I can provide some assistance to the committee in its investigation today.

As I said, there is no way to undo the damage that has been done by MF Global's bankruptcy. But it is my hope that efforts such as this one to gather facts and provide a clear picture of what occurred will assist policymakers, regulators and participants in the financial services industry in avoiding such tragic events in the future. I look forward to answering your questions.

**THE TESTIMONY OF
CLINTON J. (CJ) BLEW
TO THE
COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY
U.S. SENATE
December 13, 2011**

Good morning, Chairwoman Stabenow, Ranking Member Roberts, and members of the committee. My name is CJ Blew. My family and I operate a diversified crop and cow-calf operation in south central Kansas. Since 2005 I have served as a director for my local co-op, Mid Kansas Cooperative Association (MKC) located in Moundridge, Kansas, and currently serve as its chairman.

MKC is a full-service farm cooperative offering a full line of supplies and services for both farm and urban customers in 11 counties throughout central Kansas. Our current membership is more than 4,800 members. MKC's grain division is operated by Team Marketing Alliance (TMA), a LLC wholly owned by four central Kansas cooperatives operating 48 country elevators, totaling 38 million bushels of elevator space.

I also serve on the board of directors for CHS Inc., the nation's leading cooperative. CHS is an energy, grains and foods cooperative owned by approximately 55,000 individual farmers and ranchers and about 1,000 local cooperatives.

Thank you for the opportunity today to provide not only my personal perspective, but also the perspective of MKC on the MF Global bankruptcy and the effect it has had on agribusiness and production agriculture.

I consider myself fortunate – unlike other fellow producers and ranchers – since I do not personally have assets tied up in the MF Global bankruptcy. However, I am impacted as an individual farmer because I rely upon my local cooperative to manage my risk by forward pricing grain, and my cooperative is impacted by MF Global's bankruptcy.

The MF Global bankruptcy has sent a shockwave throughout the industry. We have long believed that risk to segregated customer funds held by members of the clearinghouse was non-existent. We now realize that was not true. The attorney for the trustee in the bankruptcy case, just last week during the House Ag Committee Hearing on MF Global, also confirmed this in his reference that 100% of these funds need to be returned as promptly as permitted by governing regulations.

Immediately following MF Global's bankruptcy filing, MKC and its respective grain marketing arm, Team Marketing Alliance, struggled with lack of access to futures positions, and had no access to the funds in our accounts. Additionally, our accounts were transferred to a new futures commission merchant (FCM), and we have spent countless hours trying to understand how and why various adjustments to account balances took place.

My cooperative continues to deal with the aftermath of this situation. At the time of the MF Global bankruptcy filing, my cooperative had a significant amount of assets in segregated accounts tied up with MF Global. While we now have access to positions in our hedge accounts, only 36 percent of the initial margin funds needed for the transferred positions have been transferred to the new accounts. We applaud the SIPA trustee's proposal for an additional distribution of funds and property that would bring the value of our distributions to about two-thirds of the original account values.

However, for MKC, there is still a significant amount (64%) of margin funds and excess cash not yet received. This needs to be priority number one for the trustee and bankruptcy court. Again, segregated funds should not be part of the bankruptcy.

I am here today to ask the committee, regulators, exchanges and trustee to make the return of customer funds and property a top priority. Customer funds were to be segregated and not used for other purposes. The confidence in the system has been compromised and it is imperative that we restore the integrity of the system.

The ability for thousands of businesses like MKC and CHS to hedge risk on an exchange offers producers a wide range of cash forward contracts that help optimize farm income. MKC's business model has been one that helps producers manage their risks. This includes grain marketing. Hedging and forward-contracting is an integral part of that.

A key to providing any type of hedging and forward contracting is the ability to finance it. We are fortunate to have a strong relationship with our lender. Although we have a very strong lender relationship, the MF Global bankruptcy has impacted our ability to borrow funds. For example, it has impacted our borrowing base since the missing funds cannot be used as collateral. This could potentially become a bigger issue as the need for financing grain in the future increases.

Looking ahead, it will be very important to re-establish confidence in the futures markets and the safety of segregated customer funds and property. As part of the process, we must ensure the sanctity of customer segregated funds. This should include the treatment of missing funds in the bankruptcy, and those funds should have exclusive rights above the bankruptcy. This process must be a priority and expedited to make all segregated account holders whole.

In conclusion, I would ask that this situation be resolved as quickly as possible, and that MKC's assets and those of other segregated account holders affected by MF Global's bankruptcy be returned immediately. I would also ask that you ensure this situation never occurs again.

Again, thank you for the opportunity to share my views today. This concludes my prepared remarks. I would be happy to respond to any questions.

**STATEMENT OF JON S. CORZINE
BEFORE THE UNITED STATES SENATE COMMITTEE
ON AGRICULTURE, NUTRITION, AND FORESTRY**

DECEMBER 13, 2011

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

Recognizing the enormous impact on many peoples' lives resulting from the events surrounding the MF Global bankruptcy, I appear at today's hearing with great sadness. My sadness, of course, pales in comparison to the losses and hardships that customers, employees and investors have suffered as a result of MF Global's bankruptcy. Their plight weighs on my mind every day – every hour. And, as the chief executive officer of MF Global at the time of its bankruptcy, I apologize to all those affected.

Before I address what happened, I must make clear that since my departure from MF Global on November 3, 2011, I have had limited access to many relevant documents, including internal communications and account statements, and even my own notes, all of which are essential to my being able to testify accurately about the chaotic, sleepless nights preceding the declaration of bankruptcy. Furthermore, even when I was at MF Global, my involvement in the firm's clearing, settlement and payment mechanisms, and accounting was limited.

The Members should also understand that the Committee turned down my request to testify voluntarily in January. I had hoped that, by that time, I would have obtained and reviewed relevant records so that I could be more helpful to the Committee.

As a consequence of my situation, not every fact of which I am or may have been aware that may be relevant to your inquiry is contained in this statement. While I intend to be responsive to the best of my ability today, without adequate time and materials to prepare, I may

be unable to respond to various questions members might pose. Other questions, given my specific role in the company, will be questions for which I simply have no personal knowledge. Many of your questions may well be ones I myself have.

Considering the circumstances, many people in my situation would almost certainly invoke their constitutional right to remain silent – a fundamental right that exists for the purpose of protecting the innocent. Nonetheless, as a former United States Senator who recognizes the importance of congressional oversight, and recognizing my position as former chief executive officer in these terrible circumstances, I believe it is appropriate that I attempt to respond to your inquiries.

My Background

I was born in 1947 and raised in the rural community of Taylorville, Illinois. After high school graduation in 1965, I attended the University of Illinois, from which I graduated in 1969. In the summer of 1969, I joined the United States Marine Corps Reserve, in which I served until 1975. In 1970, I enrolled in the University of Chicago Business School. I took classes at night while working at a bank during the day, and I and received my MBA in 1973.

In 1975, after working for a short time for a regional bank in Ohio, I took a job as a bond trader at the investment banking firm Goldman Sachs in New York. I remained at Goldman Sachs until January 1999, rising to the position of Senior Partner.

In 2000, I was elected to serve in the United States Senate representing New Jersey. I served in the Senate until January 2006, when I became the Governor of New Jersey. I was elected to one term as Governor, serving from January 2006 to January 2010.

Approximately three months after I left the governorship, I was recruited to become the chief executive officer of MF Global, whose prior chief executive had resigned abruptly after serving for 17 months. Prior to being approached about this position, I had no involvement with

MF Global, and my only financial tie to it was extremely remote – I was an investor in the private equity fund J.C. Flowers, which had an investment in MF Global and a seat on the board of directors. My connection to J.C. Flowers led to my introduction to MF Global.

MF Global Before I Joined

Before I joined the company in late March 2010, MF Global was primarily a brokerage which provided execution and clearing services for products traded in derivative markets on exchanges around the world. MF Global was primarily a voice-based broker, which means that it took and placed orders largely over the telephone and had not yet made significant use of electronic trading technology. As stated in MF Global's annual Form 10-K filing for the fiscal year ended March 31, 2009, the company's revenues derived principally from commission fees generated from execution and clearing services and from interest income on cash held in customer accounts.¹

By 2010, however, online brokerages and high-frequency traders had begun exerting downward pressure on commissions. Interest rates were at historic lows and were expected to remain so for an "extended period," according to Federal Reserve policy statements. As a consequence of these developments among others, revenues were in decline. MF Global was accordingly experiencing substantial losses. The firm had reported losses in five consecutive quarters before I arrived, including the final quarter of the fiscal year ended March 31, 2010 (just as I was arriving),² and it had lost money in each of the previous three years, including the fiscal year that ended on March 31, 2010, for which the company posted a net loss to common shareholders of \$167.7 million.³ (MF Global's fiscal year ran from April 1 to March 31; the fiscal year ended on March 31, 2010 was MF Global's 2010 fiscal year.)

I took the job at MF Global even though the company was in a weak financial position because it had several positive attributes such as memberships on multiple derivative exchanges

around the globe, solid market shares on those exchanges, and an extensive set of client relationships. I saw the possibility of taking part in the transformation of a challenged company by restructuring existing businesses and capturing opportunities available in the post-2008 financial environment.

Upon my arrival at MF Global, management and the board initiated a strategic review of our business. We engaged an outside consultant, the Boston Consulting Group, to help the firm define a business strategy that would lead it to profitability. Management, the board of directors, and the consultant came to the common conclusion that MF Global had to change its business strategy and diversify its revenues.

The new business plan provided, in substance, that MF Global would evolve into a broker-dealer, and ultimately into an investment bank, which would provide broker, dealer, underwriting, advisory and investment management services. The implementation of the plan was expected to take three to five years. This new strategic plan was communicated to the public.⁴

During my tenure as chief executive officer, MF Global made both structural and personnel changes in an effort to implement the strategic plan. One of the first priorities was to reduce the level of compensation as a percentage of MF Global's revenues. The company was paying over 60% of its revenues to its employees, and sought to reduce this figure. Many employment contracts were restructured to increase the amount of pay that was dependent on MF Global's performance. My own pay was structured to include a substantial component determined by MF Global's performance, as discussed below.

Before my tenure at MF Global, Promontory Financial Group ("Promontory"), a prominent financial consulting firm run by Eugene Ludwig, the former United States

Comptroller of the Currency, had been retained pursuant to a settlement with the CFTC to review and assess MF Global's implementation of the settlement.⁵ During my tenure, we retained Promontory to review various of MF Global's compliance systems.

I was hopeful about the prospects for the company, and I invested in it personally. Much of my compensation was in the form of options to purchase stock, which would have value only if the company prospered. When the company made a public equity offering in June 2010, I purchased almost \$2.5 million worth of stock. In 2011, I bought approximately \$500,000 more stock in the company.⁶

MF Global's Leverage

One of the recurrent themes in the media has been that MF Global took on too much risk during my tenure, in particular the amount of leverage that MF Global bore at the time of its bankruptcy. In fact, MF Global reduced leverage. In the quarter ended March 31, 2010, MF Global's leverage was 37.3. During my tenure, it was consistently around 30.⁷

The RTMs

A. Description of RTMs

There has been extensive comment about a series of positions entered into by MF Global that involved "repurchase transactions to maturity," known colloquially as "RTMs." I would like to address those here.

As relevant here, repurchase transactions (also known as "repos") worked roughly as follows: MF Global would purchase a debt security (such as sovereign debt) from a seller and would sell the same security to another party (the "Counterparty"), with an agreement to repurchase the security from the Counterparty at a later date. The agreement between MF Global and the Counterparty to sell and buy back the debt security was the repurchase agreement, and it

served, in effect, as a loan from the Counterparty to MF Global. The Counterparty would hold the debt security as collateral for the loan.

An RTM is a particular kind of repurchase transaction in which the purchaser (MF Global) agrees to buy back the underlying debt security on its maturity date.

The economic benefit of RTMs to MF Global was the difference (or “spread”) between (a) the interest rate paid by the issuer of the debt security to MF Global, and (b) the repurchase rate (referred to as the “financing rate”) paid by MF Global to the Counterparty. It is my understanding – and I do not claim to be an accountant – that under the applicable accounting principles, MF Global was required to recognize its profit immediately in RTMs, and the asset (the debt security) and the liability (the money owed to the Counterparty) must be “de-recognized,” *i.e.*, removed from MF Global’s balance sheet. I want to note here that I believe that accounting issues with respect to the RTMs would have been reviewed by MF Global’s internal auditors, outside auditors (PricewaterhouseCoopers), and its audit committee.

B. Risks Related to RTMs

Financing the purchase of debt with RTMs allowed MF Global to reduce certain kinds of risk. Because RTMs financed MF Global’s purchase of the debt security to the security’s maturity, the RTMs eliminated the risk (referred to as “financing risk”) that at some point during the life of the security MF Global would not be able to find additional financing for the security, and would therefore be forced to sell the security, potentially at a loss. Elimination of the financing risk meant that MF Global’s market risk (arising from the fluctuation of the price of the underlying debt security) was significantly reduced.

MF Global retained, however, the risk that the debt securities might default or be restructured. If the debt securities defaulted or were restructured, then MF Global would not be

paid in full at their maturity, even though MF Global would still have the obligation to buy back the debt securities from the Counterparty in full (at par).

Also, the clearing house through which the repurchase transaction was executed (typically, the London Clearing House, or “LCH”) could demand that MF Global increase its margin. It might do so for at least two reasons: (a) if it determined that MF Global itself was not credit-worthy, or (b) if it determined that the underlying debt security – which was the collateral for the loan from the Counterparty to MF Global – decreased in value. The possibility of such margin calls from LCH meant that MF Global retained liquidity risk.⁸

To mitigate some of the risk of the RTMs, on some occasions MF Global took short positions in the underlying debt securities or in similar securities.⁹

C. The Decision To Engage In RTMs Involving European Sovereign Debt

Even before I joined MF Global, the firm traded European sovereign debt securities. For instance, for the year ending March 31, 2010, the company reported that it was carrying over \$9 billion in foreign government securities, including both foreign securities owned outright and those sold to counterparties under repurchase agreements.¹⁰ The company also reported that it had used RTM agreements to purchase some securities, although not specifically foreign government debt.¹¹

In the summer of 2010, I met with MF Global’s senior traders to discuss ways to improve the company’s profitability. One of the ideas discussed was for MF Global to purchase European sovereign debt using RTMs. Such transactions were attractive for the reasons stated above – the reduction of finance risk and market risk – and the spread on the European sovereign debt securities appeared to be favorable. MF Global could engage in RTMs with these securities much as it had already done with other securities. Through these discussions, I became an advocate of purchasing European sovereign debt using RTMs.

At the time that MF Global entered into the transactions, I believed that its investments in short-term European debt securities were prudent. MF Global invested in RTMs with respect to the debt of Belgium, Italy, Spain, Ireland and Portugal. The first three of these – Italy, Spain and Belgium – were rated AA or better when MF Global invested in them. Even today, they are all at least A rated, and some of them are AA rated.¹² All of the sovereign debt of these three countries that MF Global held in RTMs matured no later than December 2012. Ireland and Portugal were lower rated, but for most of the time that MF Global held these securities they were backed by financing offered through the European Financial Stability Facility (EFSF) and the IMF, which made it highly likely that Ireland and Portugal would be able to roll over their outstanding debt before June 2013, when the funding facility expired. All of the sovereign Irish and Portuguese debt that MF Global held in RTMs matured no later than June 2012. Furthermore, because the European debt instruments that MF Global purchased did not all mature at the same time, there was an additional level of risk mitigation. As time went on and as the instruments matured, MF Global's risk would decrease.

D. Participants In The Decision To Engage In RTMs Involving European Sovereign Debt

MF Global's involvement in RTMs involving European sovereign debt securities was the subject of internal discussions with the company's traders, senior managers, and the board of directors.

The RTM transactions were reported to the board of directors. There were discussions at board meetings, at which the transactions were described, analyzed and debated. Although some people complain that boards of directors are "rubber stamps" for the decisions of company management, MF Global's board was not a rubber stamp. The members of the board of directors were independent and sophisticated, and they asked hard questions and raised concerns about the

RTMs. All of the members had been on the board of directors before I joined MF Global. The board met without management on some occasions, and it is my understanding that the RTM portfolio was a topic of discussion during at least some of those meetings.

The directors approved sovereign risk limits up to which MF Global could invest in the RTM trades. Ultimately, the limits were specified on a country-by-country basis. MF Global attempted to adhere to those limits, and generally did so. On a few occasions, however, the chief risk officer reported that the firm had exceeded its limits with respect to a particular country. I recall, for example, one occasion on which the limit was exceeded because the Euro gained value against the dollar, and the risk limits were set in dollars. On the occasions on which the firm exceeded the country limits, it nonetheless remained within the overall limit and took appropriate steps (such as entering a reverse-RTM or shorting the same security) to bring its level of exposure back within the country limits. At the time of the bankruptcy, MF Global was within the risk limits set by the board of directors.

I accept responsibility for the RTM trades that MF Global engaged in from the time that I arrived at MF Global until my departure, on November 3, 2011, and I strongly advocated the trading strategy that I have described here. It is important to recognize, however, that MF Global's involvement in RTM trades was disclosed to the board of directors, the senior officers of the company, the company's accountants and numerous outsiders.

E. The Public Disclosures Of The RTMs

The RTM trades were also publicly disclosed, both in the periodic financial statements and in other public statements, including press releases and earnings calls.

MF Global's annual filing (Form 10-K), dated May 20, 2011, for the fiscal year ended March 31, 2011, stated that MF Global invested in the sovereign debt of Italy, Spain, Belgium, Portugal and Ireland, and that the final maturity for any of these securities was no later than

December 2012, which, it noted, was “prior to the expiration of the European Financial Stability Facility.”¹³ The filing also reported that “[a]t March 31, 2011 securities . . . sold under agreements to repurchase of \$14,520,341[,000] at contract value, were de-recognized, of which 52.6% were collateralized with European sovereign debt.”¹⁴

On July 28, 2011, the company announced its results for the first quarter of fiscal year 2012 (which ended on June 30, 2011), and its disclosures about the RTMs were again extensive. Its filing (Form 10-Q) stated that as of June 30, 2011, “securities purchased under agreements to repurchase of \$16,548,450[,000] . . . were de-recognized, of which 69.3% . . . were collateralized with European sovereign debt, consisting of Italy, Spain, Belgium, Portugal and Ireland.”¹⁵ The Form 10-Q also stated that the net notional value of the Italian, Spanish, Belgian, Irish and Portuguese sovereign debt securities that MF Global held was \$6.4 billion.¹⁶ In a conference call that MF Global held on July 28 to announce its results, the RTMs collateralized with European sovereign debt were discussed.¹⁷

F. The Fate Of The RTMs

As of today, none of the foreign debt securities that MF Global used in the RTM trades has defaulted or been restructured. All of those securities that reached maturity while they were part of the RTM position paid in full.

Communications With Regulators

A. FINRA’s Position Regarding The Capital Treatment Of The RTMs Involving European Sovereign Debt Securities

In approximately the first week of August 2011, I recall becoming aware that officials from FINRA were considering whether to require that MF Global modify its capital treatment under SEC Rule 15c3-1 of the RTMs involving European sovereign debt instruments. I believe that FINRA officials may have raised this issue with others at MF Global earlier than August

2011, but to the best of my recollection, I did not focus on the issue until approximately early August. I had not met with FINRA officials, to the best of my recollection, although I spoke briefly at a meeting at MF Global's offices on or about June 14, 2011, that was attended by officials from the SEC, the CFTC, FINRA and perhaps other regulators. I believe that I spoke about RTMs at that meeting. I believe that other members of the management of MF Global spoke at that meeting about several topics, although I did not attend those others members' presentations.

On or about August 15, 2011, I went with others from MF Global to the SEC in Washington to question FINRA's interpretation of SEC Rule 15c3-1. We met with Michael Macchiaroli, the Associate Director in the Division of Trading and Markets, and others from the SEC, and presented our argument that the capital treatment of the RTMs involving European sovereign debt securities should not be changed in the way that FINRA proposed. Some days after the meeting, MF Global was apprised by FINRA that FINRA would not change its position. I thereafter made a telephone call to Mr. Macchiaroli who told me, in substance, that there was no further appeal and that MF Global had to comply with FINRA's direction. He noted, however, that other companies in similar positions had sent letters of objection to the SEC, although he was clear that such a letter would make no difference to FINRA's or the SEC's position.

Although MF Global disagreed with FINRA's position, the firm promptly complied with the demand that its United States subsidiary increase its net capital. On September 1, 2011, we made a Form 10-Q/A public filing disclosing FINRA's ruling. It stated:

As previously disclosed, the Company is required to maintain specific minimum levels of regulatory capital in its operating subsidiaries that conduct its futures and securities business, which levels its regulators monitor closely. The Company was recently informed by the Financial Industry Regulatory Authority, or FINRA, that its regulated

U.S. operating subsidiary, MF Global Inc., is required to modify its capital treatment of certain repurchase transactions to maturity collateralized with European sovereign debt and thus increase its required net capital pursuant to SEC Rule 15c3-1. MF Global Inc. has increased its net capital and currently has net capital sufficient to exceed both the required minimum level and FINRA's early-warning notification level. ...¹⁸

B. My Communications Regarding Proposed CFTC Rules Changes

Sometime in late 2010 or early 2011, the CFTC proposed certain changes in 17 C.F.R. §1.25 ("Rule 1.25"). As far as I understand, roughly speaking, Rule 1.25 outlines the permissible investments and uses for customer funds, as that term is defined in the CFTC Rules and Regulations, held by a Futures Commission Merchant ("FCM").

The proposed rule change was the topic of substantial discussion among regulated entities, industry organizations, associations, committees and even designated self-regulatory organizations. I understand that there were numerous letters received by the CFTC opposing various aspects of the proposed rule change.¹⁹ MF Global submitted a letter, along with Newedge, which was one of the largest FCMs in the United States, opposing the proposed amendments to the rule.

The proposed rule change was also the topic of the conference call in which I took part on July 20, 2011, in which CFTC Chairman Gary Gensler participated. As best as I can recall, there were others from MF Global who took part in the conference call, and the CFTC's own records state that in addition to CFTC Chairman Gensler, four other officials from the CFTC were on the call. According to the CFTC's records, I was not the only representative of the industry that had calls with members of the CFTC, including Chairman Gensler, regarding the proposed changes.

The principal topic of discussion was whether Rule 1.25 should be changed to prevent FCMs from engaging in repurchase transactions with related broker-dealers. As I understood it, the then-current version of Rule 1.25 permitted such transactions but the proposed version would

not, or would somehow limit such transactions. Consistent with the letter that we had submitted with Newedge, I argued, in substance, that such transactions should continue to be permitted because such transactions could be beneficial to the FCMs.

On the same afternoon, I spoke with another CFTC commissioner, Mr. Bart Chilton, to discuss the same matter. Mr. Chilton, who, according to the CFTC's records was accompanied by another CFTC official, listened to the arguments. I was joined on the phone by the general counsel for MF Global.

Later, I came to understand that the CFTC deferred consideration of the new rule.

C. Further Contacts

From the time that I joined MF Global through October 30, 2011, to the best of my recollection, I spoke with Chairman Gensler on only limited occasions. In addition to those contacts set forth above, I had a meeting with him in or about May 5, 2010, and I also met with him in or about December 2010. Those meetings were at the CFTC in Washington, and on those occasions there were other officials from the CFTC present.

In addition, Chairman Gensler and I had a few brief interactions at which there was, to the best of my recollection, no private discussions about the CFTC's regulation or oversight of MF Global. For example:

(a) He was a guest lecturer on government regulation at my class at Princeton on or about November 22, 2010. When he spoke at Princeton, there was another person from the CFTC present, and we did not discuss professional matters, except in the context of the class.

(b) I also attended a conference that was sponsored by the investment firm of Sandler & O'Neill on or about June 9, 2011. Chairman Gensler was there, as were others from the CFTC. I gave a presentation about MF Global at the conference, and Chairman Gensler gave the luncheon speech. I do not recall that I discussed any business with Chairman Gensler other than

a question that I put to him before the full audience during a question and answer session following his presentation. To the best of my recollection, the question was about proposed changes to Rule 1.25.

(c) In addition, on or about September 14, 2011, Chairman Gensler and I attended the wedding celebration of mutual friends. On that occasion, Chairman Gensler was not accompanied by anyone from the CFTC, but, again, we did not discuss business or regulatory matters so far as I recall.

On various occasions during my tenure at MF Global, I met or communicated with others at the CFTC about a variety of issues.

Until my final days at MF Global, to the best of my recollection, I never spoke about business with Chairwoman Shapiro of the SEC, another of our regulators, or any other SEC Commissioner. (I may have greeted Chairwoman Shapiro at a conference.) During the days preceding the filing of the MF Global bankruptcy, there were a number of conference calls with various regulators, and I now believe Ms. Shapiro was on at least one, and perhaps more than one, of the calls in which I also participated. There were typically several people on the conference calls during those final days. During my tenure at MF Global, to the best of my recollection, I never communicated with Secretary of the Treasury, Timothy Geithner.

During my tenure at MF Global, to the best of my recollection, I never spoke with the President of the New York Federal Reserve William Dudley until approximately the week preceding the bankruptcy of MF Global, other than on one occasion (on or about April 13, 2011) when he and I attended a speech at Princeton by Chairman Bernanke of the Federal Reserve. To the best of my recollection, Mr. Dudley and I greeted each other on that occasion, but did not engage in substantive conversation. During my tenure at MF Global, to the best of my

recollection, I did not speak with any governor of the Federal Reserve other than to greet Chairman Bernanke after his presentation at Princeton.

The Events Of October 2011

The late summer and fall of 2011 were extraordinarily difficult times in the financial markets for almost all market participants. Like many comparable firms, MF Global was experiencing poor earnings principally on account of diminished revenues, and highly correlated volatility in many markets.

On October 17, 2011, the *Wall Street Journal* published an article that described the FINRA ruling that MF Global had disclosed on September 1. Other news stories followed, and some of MF Global's counterparties decided to reduce their exposure to the company, requiring some adjustment in our financing. MF Global's stock began to perform relatively poorly.

On or about October 21 and 22, 2011 – in anticipation of a disappointing earnings announcement, and concerned that the ratings agencies would downgrade MF Global – I and several of my colleagues made presentations to the ratings agencies to put the earnings announcement in context. The firm customarily made presentations to the ratings agencies shortly before the firm's quarterly earnings announcements.

On Monday, October 24, 2011, Moody's cut MF Global's rating from Baa2 to Baa3, followed by another downgrade to Ba2, on October 27. Fitch followed suit, cutting the company's rating from BBB to BB+. On October 26, S&P placed MF Global on its "credit watch negative" list, although it did not downgrade its rating below investment grade.

MF Global announced its quarterly earnings on October 25, 2011. The announcement was made two days ahead of schedule so that the firm could get full information to the public in light of Moody's downgrade. The announcement revealed that MF Global had lost \$191.6 million in the quarter that ended September 30, 2011.

In light of the attention that has been given to RTMs, and the press reports that attributed MF Global's loss to RTMs involving European debt securities, it is important to make clear here that the loss was *not* related to those positions. The lion's share of the quarterly loss was a write-off of approximately \$119.4 million that reflected a valuation adjustment against a deferred tax asset. That asset had been created by years of (non-RTM) tax losses cumulated (mostly before I arrived at MF Global) in the firm's United States and Japanese subsidiaries, which had allowed MF Global to recognize as an asset potential tax benefits – equal to \$119.4 million – in future years. Under applicable accounting rules, by the second quarter of MF Global's 2011 fiscal year (i.e., the quarter ending September 30, 2011) the firm was no longer permitted to recognize those tax benefits as assets, and therefore, with the advice and knowledge of its external auditor, it recognized a loss in that amount.

In addition, approximately \$16.1 million of the quarterly loss resulted from the retirement of debt arising out of MF Global's purchase of certain of its 9% senior notes due 2038. Another approximately \$10.0 million was for "restructuring charges," which included the closure of our Japanese securities business. The remainder was miscellaneous matters including reserves for litigation, much of it arising out of events before I arrived at MF Global. Approximately \$18 million was operating losses (again, not related to the RTMs).

Shortly following the earnings announcement and the ratings downgrades, some clients and counterparties withdrew their business from the firm; others required increased margins. The firm's stock traded at sharply higher volumes and lower prices.

During the week of October 24-28, 2011, MF Global undertook extraordinary steps to ensure that it was able to honor customers' requests to withdraw funds or collateral. To the best of my recollection, during that week the firm unwound hundreds of millions of dollars worth of

RTMs, and sold the underlying sovereign debt instruments; it also sought to draw down its revolver loans from a consortium of banks led by J.P. Morgan. On October 27, MF Global sold, to the best of my recollection, \$1.3 billion in commercial paper instruments for same-day settlement, and over \$300 million in corporate securities, also for same-day settlement. The next day, I believe that MF Global sold approximately \$4.5 billion in United States agency securities. Over the course of the week, MF Global reduced the size of its match book by, to the best of my recollection, approximately \$10 billion. Despite our best efforts to sell assets and generate liquidity, the marketplace lost confidence in the firm.

The firm was in regular contact with its regulators, including the CFTC, the Federal Reserve Bank of New York, the SEC and the U.K.'s Financial Services Authority, and the Chicago Mercantile Exchange (CME), the firm's designated self-regulatory organization.

The firm was also engaged in efforts to sell the FCM part of its business. It had been contemplating, for some time prior to the week of October 24, a strategic partnership involving the FCM business. On or about Tuesday, October 25, the firm retained an investment bank, Evercore, to explore selling that business. By the next day, MF Global instructed Evercore also to explore selling the entire firm. MF Global was in negotiations to sell the firm through the weekend of October 29-30. The sale did not take place when it was discovered that customer accounts could not be reconciled at that time.

The Unreconciled Accounts

Obviously on the forefront of everyone's mind – including mine – are the varying reports that customer accounts have not been reconciled. I was stunned when I was told on Sunday, October 30, 2011, that MF Global could not account for many hundreds of millions of dollars of client money. I remain deeply concerned about the impact that the unreconciled and frozen funds have had on MF Global's customers and others.

As the chief executive officer of MF Global, I ultimately had overall responsibility for the firm. I did not, however, generally involve myself in the mechanics of the clearing and settlement of trades, or in the movement of cash and collateral. Nor was I an expert on the complicated rules and regulations governing the various different operating businesses that comprised MF Global. I had little expertise or experience in those operational aspects of the business.

Again, I want to emphasize that, since my resignation from MF Global on November 3, 2011, I have not had access to the information that I would need to understand what happened. It is extremely difficult for me to reconstruct the events that occurred during the chaotic days and the last hours leading up to the bankruptcy filing.

I simply do not know where the money is, or why the accounts have not been reconciled to date. I do not know which accounts are unreconciled or whether the unreconciled accounts were or were not subject to the segregation rules. Moreover, there were an extraordinary number of transactions during MF Global's last few days, and I do not know, for example, whether there were operational errors at MF Global or elsewhere, or whether banks and counterparties have held onto funds that should rightfully have been returned to MF Global. I am sure that the trustee in bankruptcy, the SIPC receiver, and the regulators are working to answer these questions and to understand precisely what happened during the firm's last days and hours.

As the chief executive officer of MF Global, I tried to exercise my best judgment on behalf of MF Global's customers, employees and shareholders. Once again, let me go back to where I started: I sincerely apologize, both personally and on behalf of the company, to our customers, our employees and our investors, who are bearing the brunt of the impact of the firm's bankruptcy.

That concludes my prepared statement. I am willing to answer the Committee's questions.

¹ See FY 2009 Form 10-K (for fiscal year ended March 31, 2009) (filed on June 10, 2009), at pp. 3-4 (“Description of Business”).

<u>Quarter</u>	<u>Profit/(Loss)</u>	<u>Source</u>
4Q 2010	(\$96.5 million)	News Release, “MF Global Reports Fourth Quarter and Fiscal Year 2010 Results,” May 20, 2010, at p. 1 (filed with Form 8-K on May 20, 2010)
3Q 2010	(\$22.3 million)	News Release, “MF Global Reports Third Quarter 2010 Results,” Feb. 4, 2010, at p. 1 (filed with Form 8-K on Feb. 4, 2010).
2Q 2010	(\$16.0 million)	News Release, “MF Global Reports Second Quarter 2010 Results,” Nov. 5, 2009, at p. 1 (filed with Form 8-K on Nov. 5, 2009).
1Q 2010	(\$32.8 million)	News Release, “MF Global Reports First Quarter 2010 Results,” Aug. 6, 2009, at p. 1 (filed with Form 8-K on Aug. 6, 2009).
4Q 2009	(\$119.4 million)	News Release, “MF Global Reports Fourth Quarter and Fiscal Year 2009 Results,” May 21, 2009, at p. 7 (Consolidated & Combined Statements of Operations) (filed with Form 8-K on May 21, 2009).

<u>Quarter</u>	<u>Profit/(Loss)</u>	<u>Source</u>
FY 2010	(\$167.7 million)	News Release, “MF Global Reports Fourth Quarter and Fiscal Year 2010 Results,” May 20, 2010, at p. 1 (filed with Form 8-K on May 20, 2010).
FY 2009	(\$69.2 million)	News Release, “MF Global Reports Fourth Quarter and Fiscal Year 2009 Results,” May 21, 2009, at p. 7 (Consolidated & Combined Statements of Operations) (filed with Form 8-K on May 21, 2009).
FY 2008	(\$71.1 million)	News Release, “MF Global Reports Record Fourth Quarter and Fiscal Year 2008 Results,” May 20, 2008, at p. 1 (filed with Form 8-K on May 20, 2008)

⁴ See, e.g., FY 2011 Form 10-K filing (for fiscal year ended March 31, 2011) (filed May 20, 2011), at p. 6 (“Growth Strategy”); *id.* at 15.

⁵ In February 2008, MF Global suffered a loss of \$141.0 million, following an unauthorized trading incident involving wheat futures (“Dooley Trading Incident”). Criminal charges were brought against the trader, Evan Dooley. MF Global, among other things, entered into a settlement with the CFTC, under which the company agreed to specific undertakings relating to risk management, including the engagement of an independent outside consultant (Promontory). See FY 2010 Form 10-K (for fiscal year ended Mar. 31, 2010) (filed May 28, 2010), at p. 35.

⁶ My Equity Acquisitions in MF Global

04/07/2010 Granted 2,500,000 stock options (granted as part of my initial compensation)
06/03/2010 Bought 352,100 common shares at \$7.10, in a public offering
05/20/2011 Granted 1,600,000 stock options (granted at the time of my contract extension)
06/09-11/2011 Bought 36,100 common shares at between \$6.85 and \$6.92, on the market
08/08/2011 Bought 33,960 common shares at \$5.71 and \$5.91, on the market
08/10/2011 Bought 1,000 common shares at \$5.41, on the market
08/18/2011 Bought 18,800 common shares at \$5.25, on the market

I never sold any shares or options.

⁷ Leverage is calculated by dividing (a) the reported total assets, by the sum of (b) total equity and (c) preferred shares. The relevant data can be found in MF Global's consolidated balance sheets, which are contained in the firm's quarterly (Form 10-Q) or annual (Form 10-K) financial statements.

⁸ These risks were described in, for example, MF Global's Form 10-Q for the period ending June 30, 2011 (filed August 3, 2011), at p. 76:

Under the Company's repurchase agreements, including those repurchase agreements accounted for as sales, its counterparties may require the Company to post additional margin at any time, as a means for securing its ability to repurchase the underlying collateral during the term of the repurchase agreement. Accordingly, repurchase agreements create liquidity risk for the Company because if the value of the collateral underlying the repurchase agreement decreases, whether because of market conditions or because there are issuer-specific concerns with respect to the collateral, the Company will be required to post additional margin, which the Company may not readily have. If the value of the collateral were permanently impaired (for example, if the issuer of the collateral defaults on its obligations), the Company would be required to repurchase the collateral at the contracted-for purchase price upon the expiration of the repurchase agreement, causing the Company to recognize a loss. Also, margin funds that are posted by the Company cannot be used by it for other purposes, which may limit the Company's ability to deploy its capital in an optimal manner or to effectively implement its growth strategy. For information about these exposures and forward purchase commitments, see "—Off Balance Sheet Arrangements and Risk" and "Item 3. Quantitative and Qualitative Disclosures about Market Risk—Disclosures about Market Risk—Risk Management."

⁹ See, e.g., FY 2011 Form 10-K, at p. 78 ("From time to time, and in addition to short positions in our non-trading book, we also take short positions in our trading book to mitigate our issuer credit risk further.").

¹⁰ See Notes 5 & 7 to Consolidated & Combined Financial Statements, FY 2010 Form 10-K, at p. 112-13.

¹¹ See id. at pp. 100, 112 (describing accounting treatment of RTMs).

¹² The current ratings are as follows:

Belgium:	AA negative (S&P)	AA+ negative (Fitch)	Aa1 possible downgrade (Moody's)
Italy:	A negative (S&P)	A+ negative (Fitch)	A2 negative (Moody's)
Spain:	AA- negative (S&P)	AA- negative (Fitch)	A1 negative (Moody's)

The credit ratings above were obtained from the websites of the three major credit rating agencies on December 6, 2011. See <http://www.standardandpoors.com/ratings/en/us/>; www.fitchratings.com; www.moodys.com.

¹³ FY 2011 Form 10-K, at pp. 77-78; see also *id.* at pp. 99-100.

¹⁴ *Id.* at p. 100.

¹⁵ Note 3, to Consolidated & Combined Financial Statements, 1Q FY 2012 Form 10-Q, at pp. 13-14 (filed Aug. 3, 2011).

¹⁶ *Id.* at p. 90 (table).

¹⁷ Earnings call, "MF Global Holdings' CEO Discusses F1Q2012 Results," July 28, 2011, at p. 4.

¹⁸ "Additional Information," Q1 FY 2012 Form 10-Q/A, at p. 2.

¹⁹ The CFTC received over 30 comment letters related to topics covered by the proposed changes. Many of these letters commented on the same proposed changes on which MF Global commented. As examples, both the CME and the Futures Industry Association ("FIA") in conjunction with the International Swaps and Derivatives Association ("ISDA"), Inc. challenged, among other things, the proposed amendments regarding permissible investments and internal repurchase transactions. The comments provided by the CME, FIA and ISDA advocated that an FCM should be permitted to invest in certain types of foreign sovereign debt and also advocated that FCMs should be able to engage in repurchase transactions and reverse repurchase transactions with affiliates and to engage in in-house transactions. Both JP Morgan Futures, Inc. and Morgan Stanley took similar positions.

TESTIMONY
OF
TERRENCE A. DUFFY
EXECUTIVE CHAIRMAN
CME GROUP INC.
BEFORE THE
SENATE COMMITTEE ON
AGRICULTURE, NUTRITION & FORESTRY
DECEMBER 13, 2011

Chairwoman Stabenow, Ranking Member Roberts, members of the committee, thank you for the opportunity to testify on the events surrounding the recent collapse of futures commission merchant (“FCM”) and broker-dealer (“BD”) MF Global, Inc. (“MFG”). I am Terry Duffy, Executive Chairman of CME Group (“CME Group” or “CME”), which is the world's largest and most diverse derivatives marketplace. CME Group includes four separate exchanges — Chicago Mercantile Exchange Inc. the Board of Trade of the City of Chicago, Inc., the New York Mercantile Exchange, Inc. and the Commodity Exchange, Inc. (together “CME Group Exchanges”). The CME Group Exchanges offer the widest range of benchmark products available across all major asset classes, including futures and options based on interest rates, equity indexes, foreign exchange, energy, metals, agricultural commodities, and alternative investment products. CME also includes CME Clearing, a derivatives clearing organization and one of the largest central counterparty clearing services in the world; it provides clearing and settlement services for exchange-traded contracts, as well as for over-the-counter (“OTC”) derivatives transactions through CME Clearing and CME ClearPort®.

Introduction

As the Committee knows, on the morning of October 31, the Securities Investor Protection Corporation (“SIPC”) filed a petition with a Federal District Court in New York to place the futures commission merchant/broker-dealer arm of MFG into bankruptcy, which was immediately granted by the court. While over the course of our exchanges’ histories clearing members have filed for bankruptcy protection or been placed into bankruptcy involuntarily, the MFG bankruptcy is unprecedented in that it is the first time (i) there has been a shortfall in customer segregated funds held by one of our clearing members as result of the clearing member’s improper handling of customer funds and (ii) our clearing house was unable to transfer all customer positions and property in an FCM bankruptcy due to missing customer funds in a segregated customer account under the control of the FCM. Indeed, this is the first time in the industry’s history that a customer has suffered a loss as a result of a clearing members’ improper handling of customer funds.¹

MFG’s customers’ funds held by CME clearing house were securely held; in fact, we held \$1 billion in excess funds on behalf of those customers. Our number one priority is and has been to return to every MFG customer its rightful property. Our ability to do that, however, is limited. Since MFG was placed into bankruptcy, as a matter of law, the bankruptcy trustee has been in control of the process and all decisions regarding MFG assets and the money, securities and property of its customers. Indeed, we have worked diligently with the bankruptcy trustee to transfer MFG customer accounts to other FCMs along

¹ As recent examples, in both *Refco* and *Lehman*, which had large FCM operations, while non-commodities customers of Refco and Lehman were significantly impacted by the bankruptcy proceedings, the regulated commodity customer accounts were transferred to new FCMs without any disruption. We had no reason to believe this situation would be any different at MFG until the segregation shortfall was discovered.

with a portion of the customers' collateral on deposit with CME Clearing. To date, CME Group with the bankruptcy trustee's permission has successfully transferred all (approximately 15,000) MFG customer accounts to other FCMs. The portion of customer collateral transferred to the new FCMs to margin customer positions was a decision by the bankruptcy trustee and outside the control of CME Group. CME Group continues to take steps and work with the bankruptcy trustee to facilitate the release of additional available customer funds.

There are ongoing investigations by the Department of Justice, the FBI, the CFTC, and the SEC into the events surrounding the MFG bankruptcy, including efforts to locate the missing segregated customer property and determining who was responsible for permitting the removal of that customer property from MFG's segregated accounts. Although we do not yet have these details, and are affirmatively prohibited from publicly divulging information obtained in connection with these federal investigations, I would like to share with you what CME Group does know and can share. To this end, I will briefly address the timeline of events in the days leading up to MFG's bankruptcy and the efforts to return to MFG's customers property that is rightfully theirs. Before I do that, I would like to provide the Committee with some background information regarding the clearing model in the futures industry, including the role and obligations of FCMs and derivatives clearing houses.

The Futures Commission Merchant

An FCM is an individual or organization that (i) solicits or accepts orders to buy or sell futures contracts or options on futures contracts and (ii) accepts money or other assets from customers to support such orders. As such, FCMs are agents or intermediaries for their customers. Among other things, the Commodity Exchange Act ("CEA"), which is the main statute governing the FCM's legal obligations, expressly states that all money and other property of any customer received to margin or guarantee a derivative contract cleared through a derivatives clearing organization belongs to the customer and may not be commingled with the FCM's own trading accounts.

With respect to ensuring that such customer collateral received by the FCM is segregated, the CEA, applicable regulations of the Commodity Futures Trading Commission ("CFTC") and our clearing house rules require that money and other customer property must be separately accounted for and may not be commingled with the funds of the FCM or be used to margin, secure, or guarantee any trades or contracts of any person other than the person for whom the same are held. Additionally, CME Clearing has rules on its books directly addressing FCMs' obligations in this regard.

In practice, an FCM maintains a number of customer segregated accounts at custodians approved by the CFTC. As a customer establishes positions, the FCM transfers collateral from one of its customer segregated accounts to a customer segregated account maintained and controlled by the clearing house. In many cases, the FCM collects margin from its customers in excess of what is required by the clearing house to support the customer positions cleared through the clearing house; this "excess margin" is held in an account controlled by the FCM for the benefit of its customers.

Derivatives Clearing Houses

A clearing house acts as the seller to every buyer and buyer to every seller of every cleared contract. Twice a day it pays winners and collects from losers so that debt is eliminated from the system and systemic risk is minimized. When a firm fails to pay its losses, the clearing house must still pay the firms with profitable positions. The Guaranty Fund is one of the principal means to make such payments possible.

Each clearing member contributes assets and agrees to pay an assessment, based on its risk profile, for the sole purpose of covering any loss suffered by the clearing house when it makes good on its commitment to honor its contracts despite the default of another clearing member. This guaranty is designed to protect against systemic risk that could arise if the default of one clearing member leads to the failure of other clearing members. It is worth noting that the assets in and committed to the Guaranty Fund do not belong to the CME, they belong to the clearing members who have contributed them.

Nearly 65 different U.S. FCMs hold approximately \$155 billion in U.S. customer collateral and nearly \$40 billion in collateral held for trading on foreign exchanges — much of which is not placed with regulated clearing houses. As of March 2011, the total amount of customer funds held by the top 30 FCMs was more than \$163 billion. No clearing house, however large, could effectively or economically guarantee all such funds and all such activity.

CME also was the designated self-regulatory organization (“DSRO”) for MFG. As MFG’s DSRO, CME was responsible for, among other things, conducting periodic audits of MFG’s FCM-arm and sharing any and all information with the other regulatory bodies of which the firm is a member. CME conducted audits of MFG pursuant to standards and procedures established by the Joint Audit Committee (“JAC”)² and reported such results to the CFTC. CME conducted audits of MFG, and all firms for which it was the DSRO, at least once every 9-15 months. The last audit was as of the close of business on January 31, 2011. This regulatory audit began subsequent to the audit date and was completed with a report date of August 4, 2011.

Nothing is more important to CME Group than protecting customer funds and this is exactly what our audits are designed to ensure. We reviewed the manner in which segregated funds were invested and required certain modifications which were immediately implemented. All other audit points were relatively minor and were immediately corrected. During this same period, MFG’s accounting and management controls were also reviewed by its CPA, which certified its books and records as of March 31, 2011, and by securities regulators, who required certain accounting treatment changes.

The Days Preceding MFG’s Bankruptcy

During the week of October 24, 2011, MF Global announced losses and suffered credit rating downgrades, which sparked rumors of its efforts to sell its brokerage business. On Thursday, October 27th, two of our auditors made an unannounced appearance at MFG’s Chicago offices to review the daily segregation report for the close of business on October 26th — the report stated that segregation was intact. Our auditors asked for the material necessary to reconcile the numbers on the segregation report to the general ledger and to third party sources. These procedures continued through Friday evening. At the time they left the office they had noted only immaterial discrepancies and we saw no indication that segregated funds were missing as of Wednesday October 26th. The segregation report for October 27th, which we received on the afternoon of the 28th, asserted that the firm remained in full compliance with segregation requirements.

Our auditors returned on Sunday, October 30th because we learned from the CFTC that the draft segregation report for Friday, October 28th, which had been provided to the CFTC that day, showed a \$900 million dollar shortfall in segregation caused by an “accounting error.” Our auditors, working with

² The JAC is a representative committee of U.S. futures exchanges and regulatory organizations which participate in a joint audit and financial surveillance program that has been approved and is overseen by the CFTC. The purpose of the joint program is to coordinate among the participants numerous audit and financial surveillance procedures over registered futures industry entities.

the CFTC, devoted the rest of the day and night Sunday to find the so-called accounting error. No such error was ever found. Instead, at about 2 am Monday morning, MFG informed the CFTC and CME that customer money had been transferred out of segregation to firm accounts. Transfers of customer funds for the benefit of the firm constitute serious violations of our rules and of the Commodity Exchange Act. MFG was taken over by a SIPC Trustee on Monday. However, before the SIPC Trustee stepped in Monday, the segregation report for Thursday, October 27th, which had shown not only full segregation compliance but also \$200 million in excess segregated funds, was corrected by MFG to show a deficiency of \$200 million in segregated funds. Apparently based on MFG's segregation reports, additional transfers out of segregation occurred on Friday.

MFG's Bankruptcy, the Trustee and CME Group's Guarantee to the Trustee

As previously noted, prior to MFG's bankruptcy, a shortfall was discovered in the customer segregated funds held at MFG. For this reason, unlike prior bankruptcies by FCMs, customer positions and property were not able to be ported to another solvent clearing firm. Since MFG was placed into bankruptcy, as a matter of law, the SIPC Trustee has been in control of the process and all decisions regarding MFG assets and the money, securities and property of its customers. The Trustee is holding and/or has control of a substantial pool of customer property, but must be cautious about making a distribution before he completes all of his forensic work.

At the time it was placed into bankruptcy, MFG should have had about \$5.5 billion in customer segregated money, securities and property, but only held \$5 billion. Approximately \$2.7 billion of the \$5 billion had been transferred to clearing houses in the form of collateral necessary to support positions held by MFG customers. Approximately \$2.3 billion of the \$5 billion in customer segregated funds was subject to MFG's sole control because those funds were not needed to collateralize open positions on any exchange or clearing house. Approximately \$2.5 billion was securely-held by CME Clearing. Of that amount, CME Clearing held nearly \$1 billion of so-called excess collateral on behalf of MFG customers.

The information available suggests that there might be a shortfall in segregated funds, which currently could be between 13% and 19% of segregated funds, if the information proves correct. The Trustee must also consider that the shortfall may be even greater and that if he distributes based on that assumption and it turns out to be incorrect, some customers might get better treatment than others, in contravention of the Bankruptcy Code and CFTC Regulations.

To encourage the Trustee to make a prompt distribution of property to customers, CME Group made a \$550 million guarantee to the Trustee. The guarantee is not a payment made to customers, but rather a pledge of funding to the Trustee to provide him the flexibility to return more customer assets to customers now. In the event that an interim distribution by the Trustee gives customers more cash than they would have been entitled to in the claims process under the Bankruptcy Code and CFTC regulations, CME Group has proposed that our guarantee would be used to make the customer segregation asset pool whole for the amount of any over-distribution, up to \$550 million. As a result of the guarantee, we believe the Trustee should be protected if he decides now to distribute to every customer at least 75% of its account value. We believe these extraordinary measures are needed because an interim distribution by the Trustee could be delayed even further without them.

On November 29, the Trustee filed a motion with the Bankruptcy Court seeking permission to make a third interim distribution of customer funds in the coming weeks. Though details of the timing and amount of the distributions are still being worked out, the Trustee has stated that CME Group's financial guarantee will enable him to return more than 2/3 of the value of frozen customer segregated accounts, up to an additional \$2.1 billion, in roughly two to four weeks. The Trustee has stated that this distribution will include trapped account balances, dishonored checks and distributions with respect to warehouse

receipts and other customer property at MFG. Beginning next week, another \$2.0 billion-plus is expected to be released in reliance on our guarantee.

Separately, CME Group also announced that CME Trust would make its \$50 million in assets available to CME Group market participants that suffered losses due to MFG's improper handling of funds held at the firm level. The CME Trust was established in 1969 to provide financial protection to customers in the event a CME Group member firm was unable to meet its obligations to customers. CME Trust is providing virtually all of its capital, \$50 million, to CME Group market participants suffer losses as a result of MFG's improper handling of customer funds at the firm level. Unlike the \$550 million CME Group guarantee, which is a limited guarantee in connection with the goal of accelerating interim distributions by the Trustee, the \$50 million from the CME Trust will cover CME Group customer losses due to MFG's misuse of customer funds. We note that there also are civil and criminal penalties for misusing segregated funds as MFG did here, which, if recovered, would be used to address the current shortfall.

Conclusion

Our audit and spot check of MFG were performed at the highest professional level; the transfer of segregated funds out of the appropriate accounts was disguised from all regulators. CME Group has and continues to take extraordinary measures to minimize the impact that this unprecedented event has had on the futures industry and its participants. MFG appears to have broken a number of rules and obligations to protect customer collateral resulting in customer losses.

Nothing is more important to CME Group than protecting customers. CME has worked diligently to permit customers to liquidate positions, transfer accounts and recover a significant portion of the value of their accounts. We provided the Trustee comfort with a \$550 million guarantee, so that he could expedite the release of funds to customers without loss to the bankruptcy estate. Customers, however, are justifiably frustrated that they do not yet have access to their own money.

Some might conclude that the system failed because of this one instance when customers have been injured despite the prescribed system of segregation. Regulatory failures happen, unfortunately. Banks fail and the FDIC provides sometimes inadequate protection to depositors. The taxpayers get tapped. Securities firms fail and SIPC is irrelevant to any large account holders. The laws prohibit Ponzi schemes, yet hundreds are detected every year after the public has been robbed and the money evaporated. Insider trading happens every day. Enron explodes, Lehman fails. Insurance companies fail and policy holders lose. While it is clear that action is necessary to restore customer confidence and protect against future failures, the fact is that MFG broke rules by moving customer segregated funds out of an account over which it had control. A firm failed to comply with applicable rules, but that does not mean the segregation system is a failed system. To be clear, the customer segregation regime in the futures industry was not the cause of the losses that customers are suffering from today.

We look forward to working with the industry, regulators and Congress to explore potential improvements to increase security of customer funds held by FCMs and restore confidence in the futures industry.

Testimony of James W. Giddens
Trustee for the Securities Investor Protection Act Liquidation of MF Global Inc.
U.S. Senate Committee on Agriculture, Nutrition and Forestry
December 13, 2011

Chairwoman Stabenow, Ranking Member Roberts, and Members of the Committee: Thank you for inviting me to testify today about efforts to identify, preserve and return assets to former customers of MF Global Inc. My name is James Giddens. I am the court-appointed Trustee for the Securities Investor Protection Act (SIPA) liquidation of the failed broker-dealer, MF Global Inc. I would like to provide an update on the actions I am taking to protect MF Global Inc. customers.

Introduction

On October 31, 2011, I was appointed as the independent Trustee for the liquidation of MF Global Inc. by the United States District Court for the Southern District of New York, on recommendation from the Securities Investor Protection Corporation, or SIPC. As empowered by the Securities Investor Protection Act of 1970, when a brokerage firm must be liquidated due to bankruptcy or other financial difficulties, SIPC uses a court-appointed Trustee to, within certain limits, return customers' property as quickly as possible.

A different Trustee has been appointed to oversee the bankruptcy proceedings of MF Global Holdings Ltd. As the Trustee liquidating MF Global Inc., I do not have obligations to the MF Global holding company, nor do I have firsthand knowledge about the events that transpired prior to MF Global's bankruptcy.

As Trustee, my statutory mandate as the customers' advocate is to preserve and recover MF Global Inc. customer assets so that they can be returned to the rightful owners and to maximize the estate for all stakeholders. The entire Office of the Trustee, which includes legal experts, consultants and forensic accountants, is singularly focused on looking after the interests of customers and returning assets to them as quickly as possible and in a way that is fair and consistent with the law.

I appreciate the interest of this Committee and other Members of Congress and have been working closely and continuously with SIPC, Commissioner Jill Sommers and the Commodity Futures Trading Commission, Chairperson Mary Schapiro and the Securities and Exchange Commission, along with the staffs of their respective organizations, and the Chicago Mercantile Exchange.

Distributions to nearly all of the approximately 36,000 former MF Global Inc. retail customers, whether farmers, day traders, or institutional investors, have been made within weeks of the bankruptcy filing. Through expedited court filings approved by the Bankruptcy Court, we are now in the process of

implementing a distribution that will bring the total distribution to customers to more than \$4 billion. The customer claims process, which we asked the Bankruptcy Court to authorize us to establish on an expedited basis, is also up and running, with claims forms on our website and also sent by mail.

My goal remains to pay MF Global Inc.'s former retail commodities and securities customers 100% of the amounts in their accounts as promptly as permitted by governing regulations. Ultimate distributions are, of course, dependent upon assets available and there is no assurance of a 100% return.

Exhaustive efforts to collect funds from US depositories continue. However, complicating matters, assets located in foreign depositories for customers that traded in foreign futures are now under the control of foreign bankruptcy trustees or administrators. While I will pursue them vigorously, experience dictates that recovery of these foreign assets may be more uncertain and may take more time.

The Office of the Trustee has made every effort to communicate directly and frequently with customers. Our website includes updates, court filings, claims forms and claims filing instructions, including a section addressing the common questions being asked by customers in calls or other communications to my staff. My staff and I are answering customer calls and emails and holding meetings with customer groups and counsel. In the month of November, the call center handled more than 8,500 calls, and more than 60,000 individuals accessed our website on more than 222,000 occasions.

If your constituents have any questions, I encourage them to visit MFGlobalTrustee.com, e-mail my staff at MFGITrustee@hugheshubbard.com, or call our call center at 1-888-236-0808.

I fully understand the frustration of many former MF Global Inc. customers, some of whom you have heard from directly. When a broker-dealer fails under the unprecedented circumstances surrounding MF Global's demise, the liquidation is necessarily complex. My office has been working tirelessly with speed and diligence to identify ways to return assets to customers to the full extent of our ability under the applicable provisions of SIPA, the Bankruptcy Code and CFTC regulations.

Customer Distributions

Commodities Accounts

Returning assets to the approximately 36,000 former MF Global Inc. retail commodities customers, who held millions of US futures positions, has been accomplished thus far through three Bankruptcy Court-approved bulk transfers. Once the Court-approved bulk transfers are completed, more than \$4 billion will have been distributed back to these former commodities customers with US futures positions.

Approximately \$2 billion was distributed to former MF Global Inc. retail commodities customers through the first two bulk transfers, which have been substantially completed. The first transfer was approved by

the Court just two days after my appointment as Trustee and implementation began immediately. The first bulk transfer involved those accounts with open commodities positions – a total of more than 3 million positions with a notional value in excess of \$100 billion. This transfer was implemented immediately to avoid automatic liquidation of the open positions per CFTC regulations, which would have disadvantaged customers and created instability in the futures market. The second bulk transfer totaled approximately \$500 million in customer assets and involved accounts with cash-only positions.

A third bulk transfer was approved by the Bankruptcy Court last week, and it will allow the distribution of an additional \$2.2 billion, which should result in former MF Global Inc. retail commodities customers with US futures positions receiving approximately 72% of their property. The implementation of this third bulk transfer is now underway, with completion of the process expected in two to four weeks.

The sequence and details of these transfers were driven by the priorities of returning customer assets in an expeditious and equitable manner while taking into account the complexities of the evolving situation and the unknowns regarding the locations of customer property and the amount available for distribution. With customer records and transaction bookkeeping in disarray, we worked to the full extent of the law to return assets and bring more assets under our control while also seeking to avoid market disruption.

I appreciate the exhaustive efforts of the CME and other derivative clearing organizations, which have made the bulk transfers possible. I also appreciate the CME's offer of a \$550 million guarantee, which will be available for the benefit of commodity customers should it ultimately be determined that any customer has received more than a pro rata share of the final distribution.

Securities Accounts

Last week, the Bankruptcy Court approved an expedited motion seeking authorization to sell and transfer substantially all retail securities accounts to Perrin, Holden & Davenport Capital Corp. This transfer of approximately 330 accounts will allow former MF Global Inc. retail securities customers to receive all or a majority of the net equity in their accounts. Securities customers should receive 60% or more of their account value, and 85% of the securities customers may receive the full 100% because of a SIPC guarantee.

I appreciate the ongoing support and partnership of SIPC. The staff of SIPC has been an invaluable resource for my office as we work to protect customers and return assets as quickly as possible. SIPC will play a vital role in the return of securities customer assets.

Claims Process

The Bankruptcy Court approved the customer claims process on an expedited basis on November 22, 2011. Consistent with SIPA principles and in the interest of an orderly and efficient claims process, separate, parallel customer claims processes have been established for MF Global Inc.'s commodity futures customers, securities customers, and general creditors, respectively.

Former MF Global Inc. commodity futures customers will file their claims against the commodity account estate. They will receive an equal, prorated distribution from two subsets in that estate: one for US positions traded through US clearing houses (so-called Rule 4(d) segregated funds), and another for foreign positions (so-called Rule 30.7 secured funds). The foreign secured funds are now largely under the control of foreign bankruptcy trustees or administrators, and I will use all means available to gain control of those assets held by foreign entities for the return to US customers. At this time, I do not have control of most of these assets and it is not known when, or if, the assets will become available to my office. If commodity customer claims are not satisfied from the segregated commodity account estate, the remaining claim will automatically go against the general creditors' estate.

Security customers will file their claims against the separate fund of customer property segregated for security customers under SEC rules. Deficiencies will be covered to the limit of SIPC, which is \$500,000 for the valid claims of each securities customer, including up to \$250,000 for claims for cash deposited for the purpose of purchasing securities. Remaining deficiencies in security customer claims, if they exist, will automatically go against the general creditors' estate.

General creditors cannot receive distributions from the customer estates and can only recover claims from the general creditors' estate.

The clear regulatory intent of SIPA is the protection of customer property. Consistent with SIPA, I have the authority to seek recovery of assets removed from customer property funds to the extent a cause of action exists against those who wrongfully removed the funds. In addition, I may also seek Bankruptcy Court approval to allocate existing funds from the general creditors' estate for distribution to customers to the extent of regulatory shortfalls and under certain conditions and circumstances.

Claims have already started to be filed and reviewed. My office is committed to processing them promptly and to supporting a customer-friendly claims process. More than 75,000 claims forms have been mailed to customers, and PDF claims forms have been available on the Trustee's website since November 23, 2011. Detailed instructions and deadlines are also available on the website, and members of my office have been meeting with customer groups and counsel about the process.

Investigation and "Shortfall"

As part of my statutorily-mandated duty, I am investigating the extent of and reasons for any shortfall in customer funds. An investigative team, consisting of counsel experienced in broker-dealer liquidations and expert consultants and forensic accountants from both Deloitte and Ernst & Young, continues in close coordination with the Department of Justice, the CFTC, the SEC, SIPC, and others.

The investigation is ongoing, and I am not yet in a position to make any definitive conclusions. My office does not know at this time, with certainty, the extent of the potential segregation and compliance shortfalls, but I estimate the figure could be \$1.2 billion or more. My office's investigation into shortfalls involves all customer accounts. The full amount of any shortfall will not be known with certainty until the claims process is completed. These are preliminary numbers that may well change, and I will update these numbers as appropriate. I felt obligated to share preliminary numbers and explain their uncertainty with the public to dampen assumptions that some smaller amount of the shortfall was known with certainty and could not be larger. It is my hope that, for the benefit of customers, the number will come down. No matter the exact amount of the shortfall, however, its probable size is significant and will substantially affect my ability to make a 100% distribution to former MF Global Inc. customers.

The investigation will also address broader topics, including the demise of MF Global Inc. and the events and transactions that preceded it. I have requested and have been granted subpoena power to aid in the investigation. The Bankruptcy Court has written an opinion supporting my view of the importance of maintaining the independence of that investigation and denying participation in it by the representatives of the holding company or former management whose conduct is an important subject of the investigation. At the same time, I am coordinating my investigation with those being conducted for law enforcement purposes by the SEC, the CFTC, and US Attorneys. I expect to make an interim report on the investigation to the Court at an appropriate time, and on completion of the investigation, I expect to make the final report public.

Conclusion

Thank you Chairwoman Stabenow, Ranking Member Roberts and other Members of the Committee for the opportunity to testify before you and to submit this testimony for the full record of the hearing. You can be assured that my entire office and I are fully committed to returning customers' property as quickly as possible in a fair and equitable manner that complies with the law.

APPENDIX – TIMELINE OF TRUSTEE'S MOTIONS ON BEHALF OF CUSTOMERS AND COURT APPROVALS

- **October 31, 2011** – Court appointment of the Trustee for the SIPA Liquidation of MF Global Inc. at approximately 5:00 pm EST.
- **November 2, 2011** – Trustee files emergency motion seeking approval of the bulk transfer of customer commodity open positions and a percentage of the collateral associated with those positions.
- **November 2, 2011** – Court holds a hearing and approves Trustee's motion for the bulk transfer of open positions and collateral.
- **November 4, 2011** – Court holds a hearing on an expedited basis and confirms Trustee's authority to issue subpoenas as part of his duty to conduct an investigation. The Court denies a motion to participate in the investigation by representatives of the holding company and subsequently issues an opinion emphasizing the importance of the independence of the Trustee's investigation.
- **November 7, 2011** – Trustee files motion seeking establishment of procedures to return misdirected wires.
- **November 15, 2011** – Trustee files application seeking approval of an expedited claims process.
- **November 15, 2011** – Trustee files motion seeking approval of the bulk transfer of 60% of the cash attributable to commodities accounts holding only unencumbered cash, or cash equivalents, on October 31, 2011.
- **November 17, 2011** – Court holds a hearing and approves Trustee's motion for the bulk transfer of cash-only accounts.
- **November 22, 2011** – Court holds a hearing and approves Trustee's expedited claims process.
- **November 22, 2011** – Court holds a hearing and approves procedures for return of post-bankruptcy misdirected wires.
- **November 29, 2011** – Trustee files motion seeking approval of the bulk transfer of up to an additional \$2.1 billion to restore approximately two-thirds or more of US segregated customer property pro rata to all former MF Global Inc. commodities customers with US positions.
- **November 30, 2011** – Trustee files motion seeking authorization to sell and transfer substantially all retail securities accounts to Perrin, Holden & Davenport Capital Corp.
- **December 9, 2011** – Court holds a hearing and approves Trustee's motion for a third bulk transfer to former commodities customers with US positions; Court holds a hearing and approves Trustee's motion to sell and transfer substantially all retail securities accounts.

TESTIMONY OF ADVANCE TRADING INC.
 TO U.S. SENATE COMMITTEE ON
 AGRICULTURE
 NUTRITION AND FORESTRY
 December 13, 2011



My name is Jeffrey Hainline; I am Chairman of Advance Trading Inc. Advance is a large non-guaranteed Introducing Broker that did business with MF Global. Our customers, who are producers, elevators, grain processors, meat producers, covering the full range of U.S. grain industry, along with some international customers, owned about 3,000 accounts there.

I'm sure you can all imagine what recent events have meant to Advance Trading's customers and its business, with large sums still unaccounted for and confusion still afoot more than a month after MF's designation as a Clearing Member was withdrawn.

I am not appearing here to excoriate, recriminate, ventilate, or agitate - rather, to suggest that the Senate Agriculture Committee focus its initial effort on the crucial issue that must be dealt with first. This issue must be resolved in any event, but the need is immediate.

I'll use the grain-elevator business as an example. In the grain industry 100% of each year's supply is produced within a narrow time frame (harvest) and used throughout the full year. So elevators are needed to store that supply for a full year or more. As such, the business is overwhelmingly dominated, like few others, by inventory management and financing. Within each year, the price of inventory fluctuates widely and unpredictably. This necessitates two distinct types of financing - one quantifiable tranche to pay the farmer, and another of unknown size to finance the margin on an equal and opposite position at a futures exchange, so as to neutralize the truly catastrophic price risk inherent.

A typical occurrence is for an elevator to buy grain from producers, simultaneously establish a short futures position to offset, and thereafter profitably warehouse the grain for many months through a sharp advance in price which requires ever-greater financing to maintain the futures short. Depending on market behavior these borrowings can amount to many times the net worth of the elevator corporation. But lenders make funds available at very competitive rates for this purpose because the loan is well-secured by the verifiable presence of the grain in the elevator, and the financial soundness of the futures hedge. The futures market is the essential, central financial instrument on which world grain commerce is entirely based, and *any change in the lender's assessment of risk on what can be an extremely large and rapidly increasing loan balance would alter their financial relationships with grain businesses in dramatic fashion.*

Thus, widespread statements about "missing" money are misleading and threatening to the extraordinarily finance-dependent grain business, if not the entire futures industry. Regardless of whether any specific tranche of money is "missing" or not, each firm's customer segregated capital is guaranteed by the capital of the Clearing Member. Thus far, no statement by the bankruptcy trustee that I have seen seems cognizant of the fact that segregated customer funds are guaranteed by the full capital of the Clearing Member. It is entirely clear to all that that is a precondition of becoming a Clearing Member of the Chicago Mercantile Exchange, and others.

Absent the reality of that guarantee, the business cannot operate.

Additionally, the trustee's performance to-date has been unconscionably slow, for example we understand some customers of foreign exchanges still have not been notified as to prices at which their accounts were involuntarily liquidated. They absolutely can be given that information in short order, yet that is undone after 5 weeks. In this business, every single contract and every single dime is accurately allocated and accounted for on a daily basis. Large corporate bankruptcies like this are often a "go-slow" affair; what I am saying is that the customer accounts and funds portion of MFG cannot be handled in that manner.

So both priority, and rapid execution of the priority, of customer segregated funds in bankruptcies of Clearing Members must occur, *separate* from the potentially years-long unwinding of the multifaceted firm that was MFG. This principle absolutely must be clear for futures exchanges. Futures contracts at the Chicago Mercantile Exchange and other exchanges are rightly regarded by lenders as financially sound *precisely because, and only because*, each Clearing Member guarantees its own capital as *first in line* to back its customers' segregated funds, and the Clearing Corporation guarantees the trades between Clearing Members. Any ambiguity or hesitation as to exactly where those necessary guarantees stand will not only freeze the industry, it will certainly translate into a *sizable multiplier effect in terms of lower prices to farmers, higher prices to consumers, and a substantial impact on world agriculture*. It is not overstating the case to project that if the priority of customer segregated funds in bankruptcy is not firmly entrenched, it will need to be in the wake of MFG, after the effects of not doing so become apparent. *This is an absolutely necessary principle for U.S. agriculture, which is why this Committee must see that it is upheld in what appears thus far to be an unacceptably slow process of repatriation of customer funds.*

As to making changes in the separation between customer seg and proprietary capital, of course first the ongoing forensic examination must be allowed to lay bare what occurred. Thus far, some of us understandably angry and cheated customers have called for separate accounts for each customer and other measures that would add complexity and bureaucracy.

In the end, even if additional restrictions on financial instruments or accounting or other operational measures are proposed, let's not forget a few things:

--That Clearing Members *also* have their capital pledged to their segregated customer funds against the single greatest threat *they themselves* face, which is that their customers defraud or go bankrupt *on them*. This has occurred with relative frequency, *and because the capital of the Clearing Member itself was required to be paid into its customers' seg funds, the other customers were made whole with little if any delay.*

--That new financial techniques will arise thereafter, accounting-rules ambiguity will always foster different opinions, and financial executives will always take innovative steps to maximize returns.

So establishing rules that would have precluded the last problem will not necessarily preclude the next, and may in haste tend toward overkill to assuage those angry at being damaged. I

represent my customers' interests, period, and have no particular affection for CME or its business model. But the Exchanges we deal with, primarily CME, have the greatest abiding interest of anyone in the solvency of their clearing members, the security and good will of customers, and the trust of fiduciaries that lend large sums to both. The CME above all others cannot chance ever having this occur again, and it also has more financial acumen and practical experience than anyone pertaining to all participants that make up its business community. While CFTC and this Committee will examine what it does carefully, CME together with the other regulated exchanges must propose any necessary changes. The CFTC should then approve or suggest further adjustments that the exchanges analyze and results in the needed changes. If the Exchanges err, it might result in far greater damage to, or even failure of, their operations. That tends to concentrate their minds rather more than does the incentives or motives of other parties.

By concentrating its first efforts on expediting the unwinding of the current financial snarl affecting a substantial portion of U.S. agriculture, this Committee can make the greatest contribution to all its agricultural constituents and consumers too. It must use its authority and expertise to clarify the bankruptcy status of Futures Clearing Members' responsibility to their customers' segregated funds, which is the only way the futures industry at the financial heart of U.S. agriculture can possibly operate. That is the largest and most pressing issue in the failure of MFG.

We need:

- **to protect our efficient system**
- **to be vigilant for possible corruption**
- **to send a strong signal of deterrence**

- **RESTITUTION of all segregated funds**
- **AND REFORM of our system to prevent abuse**

Freeland Bean & Grain, Inc.
1000 E. Washington St.
Freeland, MI 48623

Good Morning Senator Stabenow, Ranking Member Roberts, and members of the committee:

My name is Roger Hupfer. I am the President and Marketing Manager of Freeland Bean & Grain, Inc. in Freeland, Michigan.

I want to thank you for this opportunity to give you an overview of our company, and how the M.F. Global Bankruptcy has impacted our business.

Our company is a family owned and operated full service Agribusiness. We originated in 1983, and have provided almost 30 years of uninterrupted service to our local community.

We operate two country elevator facilities, which accept corn, soybeans, and soft white and red wheat. We also receive, process, and ship edible beans to various domestic packagers, canners, as well as interests in Mexico.

We also provide feed, fertilizers, seeds, crop protection products, and custom application service for our customers.

We are members of the National Grain & Feed Association, the South East Grain & Feed Association, and the Michigan Agribusiness Association. We are fortunate to have Jim Byrum representing our Agribusiness interests in Michigan. He has been a great asset to our industry.

We take great pride in how we operate our business, and we work very diligently with our customers to help them achieve their marketing goals.

Our customers place great confidence and trust in us when delivering their commodities to our facilities, and they expect us to provide and maintain competitive, perpetual marketing programs to assist them with their risk management.

It is this very confidence and trust that was shattered by the M.F. Global Bankruptcy. The industry has always operated under the assumption that our funds were in a safe and secure place, by being kept in segregated accounts. We were in total shock when we found out otherwise.

Misuse of these funds for other purposes is not only unethical, but also criminal. Those responsible for oversight fell way short of fulfilling their responsibilities in this matter.

Our company has plans to expand and construct a new and state of the art grain receiving and storage facility with ground breaking scheduled for the March and April period of 2012. This new facility will help us meet increased demand, and give us the ability to load out grain unit trains.

How will we be able to effectively manage the increased volatility and price risk and place our hedges with confidence if the very integrity of exchange-based futures trading is in jeopardy?

Also, how do we know if other clearing firms might be trouble, by being involved in bad investments and poor management?

There are several livestock and dairy producers in Michigan that have a much greater amount of capital at risk than some of the commercial grain companies. I can personally give you one example of a customer of ours that has more capital at risk than our company does. All he was attempting to do was to sell his cash grain, and hedge by buying call options. He is not a speculator, just a prudent operator.

If this situation is not resolved, I feel it will have an impact on rural communities across the country.

I can speak for our company, and on behalf of all the other agribusiness firms that have been impacted by this disaster, that we expect to be made whole, and have all of our funds returned to us in a timely manner, so that the integrity of the exchange can be restored.

Senator,

Again, thank you for this opportunity to share my views with you today. I would be happy to respond to any questions.

**STATEMENT OF COMMISSIONER JILL E. SOMMERS
COMMODITY FUTURES TRADING COMMISSION
BEFORE THE
UNITED STATES SENATE
COMMITTEE ON AGRICULTURE
WASHINGTON, DC**

December 13, 2011

Good afternoon Chairwoman Stabenow, Ranking Member Roberts, and members of the Committee. Thank you for inviting me today to discuss the MF Global Bankruptcy. I understand the severe hardship this bankruptcy has caused for customers of MF Global. These customers correctly understood the risks associated with trading futures and options, but never anticipated that their segregated accounts were at risk of suffering losses not associated with trading. Many customers have reached out to me and my staff directly, and we are doing everything we can to get as much of their money back to them as quickly as possible. I have made that my number one priority.

On November 9th, the Commission voted to make me the Senior Commissioner with respect to MF Global Matters. This authorizes me to exercise the executive and administrative functions of the Commission solely with respect to:

- The pending enforcement investigation;
- The pending bankruptcy case in the Southern District of NY involving MF Global, Inc. (which is the broker-dealer/futures commission merchant);
- The pending bankruptcy case in the Southern District of NY involving MF Global Holdings, Ltd. (which is the parent company); and

- Other actions to locate or recover customer funds or determine the reasons for shortfalls in the customer accounts.

The Commission has dozens of staff members (including auditors, attorneys, and investigators) in New York, Chicago, and Washington, D.C. working on these issues. I am unable to discuss matters that might compromise the ongoing enforcement investigation or parallel investigations by any other government agency, so I will focus my comments on the bankruptcy cases pending in New York and on the legal requirements surrounding the segregation of customer funds held at futures commission merchants (FCMs).

Pending Bankruptcy Cases

As I understand the Securities Investors Protection Act of 1970 (SIPA), the SEC has the authority to refer an entity registered as a broker-dealer (whether or not such entity is also registered as an FCM) to the Securities Investors Protection Corporation (SIPC) if there is reason to believe that the entity is in or is approaching financial difficulty. SIPC may initiate a liquidation proceeding to protect customers of an insolvent broker-dealer when certain statutory criteria are met. In this instance, the liquidation was initiated on October 31st, with the support of the CFTC and consent of MF Global. When a broker-dealer is also a registered FCM, as MF Global was, there is one dually-registered entity and the entire entity gets placed into liquidation. Because there is one entity, it is not possible to initiate a SIPA liquidation of the broker-dealer, and a separate bankruptcy proceeding for the FCM. It is important to note, however, that when a dually-registered BD/FCM is placed into a SIPA liquidation proceeding, the relevant provisions and protections of the Bankruptcy Code, the Commodity Exchange

Act ("CEA"), and the Commission's regulations apply to commodity accounts just as they would if the entity were solely an FCM and in a non-SIPA bankruptcy proceeding.

An obvious point to make is that if a firm is involved in a bankruptcy proceeding, something must have gone very wrong. Bankruptcy proceedings can be very complicated and at times, messy. This can be magnified when the bankruptcy is among the largest in history and there are serious questions about the location of customer funds. The Commission is no stranger to FCM bankruptcies. Lehman Brothers and Refco are the two most recent FCM bankruptcies. While the Lehman Brothers bankruptcy was monumental in scale, and the Refco bankruptcy involved serious fraud at the parent company, commodity customers did not lose their money at either firm. In both instances, commodity customer accounts were wholly intact, that is, they contained all open positions and all associated segregated collateral. That being the case, customer accounts were promptly transferred to healthy FCMs, with the commodity customers having no further involvement in the bankruptcy proceeding. Unfortunately that is not what happened at MF Global because customer accounts were not intact.

In FCM bankruptcies, commodity customers have an exclusive right to customer property. This includes, without limitation, segregated property, property that was illegally removed from segregation and is still within the debtor's estate, and property that was illegally removed from segregation and is no longer within in the debtor's estate, but is clawed-back into the debtor's estate by the Trustee. If the customer property as I just described is insufficient to satisfy in full all the claims of customers, Part 190 of the Commission's regulations allow other property of the debtor's estate to be classified as customer property to make up any shortfall. A parent or affiliated entity,

however, generally would not be a “debtor” unless customer funds could be traced to that entity.

Within the first weeks of the MF Global bankruptcy, the Trustee for the BD/FCM had, with the encouragement and assistance of the CFTC, transferred nearly all positions of customers trading on U.S. commodity futures markets, and transferred approximately \$2 billion of customer property. On November 29th, the Trustee moved to transfer an additional \$2.1 billion back to customers, to be used to “top up” all commodity customers to at least two-thirds of their account values as reflected on the books and records of MF Global, Inc. The Commission fully supported the Trustee’s motion. Last Friday, the Bankruptcy Court granted the motion, and it appears that the “top up” amount will be closer to 72%. The additional \$2.1 billion transfer is expected to be completed within two to four weeks. The transfers to date demonstrate that commodity customers are receiving the highest priority in claims to the bankruptcy estate. Nonetheless, we understand that more must be done.

FCM Investment of Customer Funds

An FCM is authorized to invest funds that are in customer segregated accounts. This authorization is found in Section 4d of the CEA and in Commission Regulation 1.25 (a brief history of changes to Regulation 1.25 is found in the attached Appendix). Regulation 1.25 only relates to how an FCM can invest customer funds. Moreover, any losses that may occur as a result of those permissible investments are the responsibility of the FCM, not the customer. Prior to last week, Regulation 1.25 allowed an FCM to invest customer funds in highly-rated foreign sovereign debt, but the investment was strictly limited to the amount of that nation’s foreign currency a customer posted to the

FCM. Regulation 1.25 does not, and has never, had anything to do with investments that an SEC/FINRA-regulated BD makes for its own account.

In thinking about the investment of customer funds, it may be helpful to draw an analogy to a savings account at a bank. Let's say someone opens a savings account with \$1,000 and the bank agrees to pay 0.25% interest annually. That \$1,000 is not just sitting at the bank waiting for the depositor to come and get it. The bank invests that money, or loans it to others, etc., with the goal of earning a rate of return greater than the 0.25% interest the bank is obligated to pay the depositor. Very simply stated, if the bank earns a rate of return greater than 0.25%, that is net revenue for the bank. If the bank earns a rate of return less than 0.25%, there is a net loss.

Broadly speaking, the investment of customer funds by an FCM is similar, but there are critical safeguards and restrictions placed on FCMs. Section 4d of the CEA and Commission Regulation 1.25 list the only permissible investments an FCM can make with customer funds. The Commission has been, and continues to be, mindful that customer segregated funds must be invested in a manner that minimizes their exposure to credit, liquidity, and market risks both to preserve their availability to customers and DCOs and to enable investments to be quickly converted to cash at a predictable value. As such, Regulation 1.25 establishes a general prudential standard by requiring that all permitted investments be "consistent with the objectives of preserving principal and maintaining liquidity."

While an FCM is permitted to invest customer funds, it is important to note that if an FCM does so, the value of the customer segregated account must remain intact at all times. In other words, when an FCM invests customer funds, that actual investment,

or collateral equal in value to the investment, must remain in the customer segregated account at all times. If customer funds are transferred out of the segregated account to be invested by the FCM, the FCM must make a simultaneous transfer of assets into the segregated account. An FCM cannot take money out of a segregated account, invest it, and then return the money to the segregated account at some later time.

Customer Accounts at FCMs

When a customer opens a trading account at an FCM, Commission Regulations require the customer to be provided with a risk disclosure statement that generally centers on market risk, market volatility, and leverage. Pursuant to Commission Regulation 1.55(b)(6), the required risk disclosure statement must also include the following: "You should consult your broker concerning the nature of the protections available to safeguard funds or property deposited for your account." There are no required disclosures concerning how customer funds can be invested by an FCM.

Commission Regulation 1.20 requires that accounts holding segregated funds be titled specifically to identify the contents of the account as separate from the ownership of the FCM. In addition, FCMs must obtain letters from their depositories acknowledging that the depositories cannot exercise any rights of offset to such accounts for obligations of the FCM.

Commission Regulation 1.12 requires FCMs to notify the Commission immediately of an occurrence of under-segregation. FCMs also must notify the Commission of instances of significant margin calls (such as a margin call to a customer, which if not made, would put fellow customers at risk if an adequate buffer or "excess segregation" was not in segregated accounts).

A customer is required to post margin to support futures positions. Generally, a customer deposits more than the minimum initial margin required for the positions established. The additional funds provide a buffer so a customer can place trades without posting additional margin, and lessen the likelihood of repeated margin calls or having positions liquidated if margin calls are not met on a timely basis. In addition to customers depositing additional margin, in practice, FCMs typically maintain significant amounts of their own capital as "excess segregated funds." By doing this, one customer's deficit due to market moves or unmet margin calls is covered by the FCM's buffer and does not result in one customer's funds being exposed to the credit risk of another customer. FCMs are not obligated to provide excess segregated funds, but given the legal obligation at all times to have sufficient funds in segregated accounts to cover all liabilities to customers, FCMs generally find it wise to have a buffer.

A customer may withdraw excess margin funds or use such funds as the customer deems appropriate. This would include using the funds for non-futures related transactions with the FCM. If the excess funds held by the FCM are used in a manner directed by the customer such that the funds are not maintained in a futures segregated account, the funds would not have the protections afforded segregated customer funds under the Bankruptcy Code and Part 190 of the Commission's Regulations.

Oversight of FCMs

FCMs are subject to CFTC-approved minimum financial and reporting requirements that are enforced in the first instance by a designated self-regulatory organization ("DSRO"), for example, the Chicago Mercantile Exchange or the National Futures Association. DSROs also conduct periodic compliance examinations on a risk-

based cycle every 9 to 15 months. The requirements of DSRO examinations are contained in Financial and Segregation Interpretations 4-1 and 4-2, which are specified as application guidance to Core Principle 11 (Financial Integrity) for Designated Contract Markets. The Commission has proposed codifying the essential components of these interpretations into an amended Commission Regulation 1.52.

An examination of segregation compliance is mandatory in each examination (certain other components need not be included in every examination). This examination includes a review of the depository acknowledgement letters and the account titles of segregated accounts (unless unchanged from the prior examination); verifying account balances, and ensuring that investment of customer funds is done in accordance with Commission Regulation 1.25.

Commission Regulation 1.10 requires FCMs to file monthly unaudited financial reports with the Commission and the DSRO. These reports include the FCM's segregation and net capital schedules, and any "further material information as may be necessary to make the required statements and schedules not misleading." Each financial report must be filed with an oath or attestation, and for a corporation, the oath must be by the CEO or CFO.

Commission Regulation 1.16 requires FCMs to file annual certified financial reports with the Commission and the DSRO. The audits require, among other things, that if a new auditor is hired, that new auditor is required to notify the Commission of certain disagreements with statements made in reports prepared by prior auditors. Auditors also must test internal controls to identify, and report to the Commission, any "material inadequacy" that could reasonably be expected to: inhibit a registrant from

completing transactions or promptly discharging responsibilities to customers or other creditors; result in material financial loss; result in material misstatement of financial statements or schedules; or result in violation of the Commission's segregation, secured amount, recordkeeping or financial reporting requirements.

Conclusion

While our current focus is returning as much money as possible to customers, we are expending an enormous amount of effort to locate the missing customer funds and pursuing the enforcement investigation. All of the information we learn during these aspects of our work will be relevant to the Commission as it considers "lessons learned" and any policy responses or regulatory changes. It is just too early to tell, however, what responses and/or changes the Commission will find appropriate.

Obviously, the Commission has a great deal of work ahead of it to get customer funds back where they need to be, to determine what went wrong with segregated funds at MF Global, to determine whether to prosecute any violations of the Act, and to determine what needs to be done to prevent a similar circumstance in the future. Commission staff is coordinating on these issues with sister regulators both domestically and overseas, and is working closely with the SIPA Trustee to provide whatever support he needs to resolve issues with commodity customer accounts. I greatly appreciate the continued support of this Committee as we move forward with this important work.

Thank you. I am happy to answer any questions you may have.

Appendix

Under Section 4d of the CEA, customer segregated funds may be invested in:

- obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities); and
- general obligations of any State or of any political subdivision thereof (municipal securities).

Pursuant to Section 4(c) of the CEA, in December 2000 the Commission expanded the list of permitted investments by amending Regulation 1.25 to permit investments in:

- general obligations issued by any enterprise sponsored by the United States (government sponsored enterprise or GSE debt securities);
- bank certificates of deposit (CDs);
- commercial paper;
- corporate notes;
- highly-rated foreign sovereign debt (**but the investment is strictly limited to the amount of that nation's currency the customer posts as collateral to the FCM**); and
- interests in money market mutual funds (MMMFs).

In connection with that expansion, the Commission included several provisions intended to control exposure to credit, liquidity, and market risks associated with the additional investments, e.g., requirements that the investments satisfy specified rating standards and concentration limits, and be readily marketable and subject to prompt liquidation.

In February 2004, the Commission adopted amendments to Commission Regulation 1.25 regarding:

- repurchase agreements using customer-deposited securities and time-to-maturity requirements for securities deposited in connection with certain collateral management programs of DCOs.

In May 2005, the Commission adopted amendments to Commission Regulation 1.25 regarding:

- standards for investing in instruments with embedded derivatives;
- requirements for adjustable rate securities;
- concentration limits on reverse repurchase agreements;
- transactions by FCMs that are also registered as securities brokers or dealers (in-house transactions);
- rating standards and registration requirements for MMMFs;
- an auditability standard for investment records; and
- certain other technical changes.

In 2007, the Commission's *Division of Clearing and Intermediary Oversight (Division)* launched a review of the nature and extent of FCM investment of customer funds in order to further its understanding of investment strategies and practices and to assess whether any changes to the Commission's regulations would be appropriate. As part of this review, all registered *Derivatives Clearing Organizations (DCOs)* and FCMs carrying customer accounts provided responses to a series of questions. As the Division was finalizing its review of materials submitted by DCOs and FCMs, and conducting follow-up interviews with them, the market events of September 2008 occurred and changed the financial landscape such that much of the data previously gathered no longer reflected current market conditions.

In May 2009, the Commission issued an advance notice of proposed rulemaking to solicit comment prior to proposing amendments to the list of permitted investments. The Commission sought comments, information, research, and data regarding regulatory

requirements that might better safeguard customer segregated funds. It also sought comments, information, research, and data regarding the impact of applying the requirements of Regulation 1.25 to 30.7 funds (30.7 refers to funds of foreign futures and options customers). The Commission received twelve comment letters - eleven supported maintaining the list of permitted investments and/or ensuring that MMMFs remained permitted investments; five focused solely on the topic of MMMFs, providing detailed discussions of their usefulness to FCMs; and several addressed issues regarding ratings, liquidity, concentration, and portfolio weighted average time to maturity.

In October, 2010, the Commission proposed changes to the list of permissible investments, and on December 5, 2011 adopted final rules in that regard. The final rules, among other things:

- retain U.S. agency obligations, including implicitly backed GSE debt securities, but allow investment in debt issued by Fannie Mae and Freddie Mac only as long as they operate under the conservatorship or receivership of FHFA;
- remove corporate debt obligations not guaranteed by the United States;
- eliminate foreign sovereign debt;
- eliminate in-house and affiliate transactions; and
- impose asset-based concentration limits on various investments.

Statement of Henri J. Steenkamp
Chief Financial Officer of MF Global Holdings Limited
Before the United States Senate Committee on Agriculture, Nutrition and Forestry
December 13, 2011

Chairwoman Stabenow, Senator Roberts and Distinguished Members of the Committee:

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 of this year. Let me say at the outset that I am deeply saddened, upset and frustrated that money belonging to MF Global Inc.'s customers has been frozen or is missing. 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 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 effort to find the missing funds.

My Background

I was born and raised in Johannesburg, South Africa. I hold a bachelor's degree in accounting and a post-graduate honors degree in finance, both from the University of Johannesburg. I am also a chartered accountant. I started my career in the audit practice of the Johannesburg office of PricewaterhouseCoopers in 1999 before moving to the New York City office in 2003. Throughout my tenure at PricewaterhouseCoopers, I focused on, among other

things, assisting clients with the SEC registration process and listing on exchanges in the United States.

In late 2006, I joined MF Global's predecessor, Man Financial, the brokerage division of Man Group plc, as a Vice President of External Reporting and Accounting Policy and I have been at the company ever since. In July 2007, Man Financial was renamed MF Global. I was promoted, in August 2008, to Senior Vice President, Chief Accounting Officer and Global Controller. My main function in this position was to ensure that the financial accounts of our subsidiaries – which are prepared in accordance with the legal and accounting requirements of their home jurisdictions – were properly consolidated and reported under U.S. generally accepted accounting principles. In April of this year, I was appointed to the position of CFO of MF Global Holdings Limited. My predecessor remained at the company and transitioned to a new senior role as the global head of the retail business.

Description of My Role as CFO

Let me begin by saying again that like everyone involved in the issues surrounding MF Global, I am deeply distressed by the fact that customer monies have not yet been fully accounted for. 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 hectic 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. Nevertheless, I have done my best to help the trustees at MF Global, and I will endeavor to help this Committee in any way I can.

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. Given MF Global's corporate structure and my role within it, my main objective with respect to MF Global subsidiaries was to build robust and independent financial management teams at our regulated subsidiaries and to assist in the resolution of issues that were brought to my attention through an exception and escalation reporting process.

As its name suggests, MF Global Holdings Limited – my employer – is a global holding company with approximately 50 domestic and foreign subsidiaries. It is based in New York City. Its principal subsidiaries are registered futures commission merchants and broker-dealers (or the foreign equivalents) in the United States and certain foreign jurisdictions including the United Kingdom, Australia, Singapore, India, Hong Kong and Canada. These subsidiaries are members of various commodities, futures, and securities exchanges, and are subject to local regulatory, compliance and accounting requirements in their home jurisdictions. In the United States, the futures commission merchant and broker-dealer was MF Global Inc., an entity headquartered in Chicago. (To avoid confusion, where it is necessary to specifically refer to MF Global Inc., I will call it "MFGI" in my statement.)

Each of the regulated subsidiaries generally had its own or a regional chief executive officer, chief operating officer, chief financial officer, chief risk officer, chief compliance officer, controller, treasurer and other senior officers obligated to independently discharge the customary duties of those offices according to their home jurisdiction's regulatory requirements. Senior

officers of each subsidiary generally reported directly or indirectly to their respective chief executive officers (with the exception of the United States, as the global CEO was in the United States), and with a dual reporting line to their global or regional function heads. For example, a CFO of a subsidiary typically reported to that subsidiary's CEO and to a regional CFO who, in turn, reported to the Head of Legal Entity Reporting – a new position I established upon becoming CFO. Similarly, the treasurer of a subsidiary generally reported to that subsidiary's CEO or CFO, as well as to the Global Treasurer. All of these positions were filled by highly experienced professionals. Both the Global Treasurer and the Head of Legal Entity Reporting ultimately reported to me.

In light of the matters of interest to the Committee, it is important to note that I gained responsibility for the firm's treasury functions for the first time when I became the global CFO in April of this year. The handling of customer funds is both a treasury and treasury operations function. In my previous positions at the firm, neither treasury nor treasury operations reported to me. Upon my becoming CFO, treasury operations continued to report to the head of global operations. Direct involvement with operational matters such as bank accounts or fund transfers has never been part of my duties. Where certain functions are part of treasury rather than treasury operations, these functions were handled by local treasurers who reported to me indirectly.

At all times during the events in question, I believed that the finance functions of the firm's subsidiaries were being carried out by highly competent and experienced managers. When I became global CFO, I sought to streamline the organizational structure and bring in

additional talent. For example, when taking on the responsibility for treasury in April of this year, I recruited a new Global Treasurer to strengthen the firm's treasury functions. I also created the Head of Legal Entity Reporting position, which reported to me, as part of a strategy to fortify the firm's financial reporting processes.

As you are aware, MFGI is currently under the jurisdiction of a SIPC trustee, whereas the holding company has a separate trustee who was recently appointed in the Chapter 11 bankruptcy proceedings. Since the bankruptcy filing, my role has changed substantially and I have had virtually no access to books, records or documents in MFGI's possession, and only extremely limited access to MFGI personnel.

Segregated Customer Funds

It is, of course, important to understand the way in which segregation issues were handled at MF Global in the ordinary course of business. Allow me to address that question and then provide the Committee with a brief chronology of the events leading up to my learning of a problem with the segregation calculations on the evening of Sunday, October 30, 2011.

As I explained earlier in this statement, MFGI is the subsidiary that acts as a futures commission merchant, or "FCM." 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. I was not aware of any problems concerning segregated funds or the applicable calculations until Sunday, October 30th, when the issue being investigated by this Committee was brought to my attention. For that reason, I do not know why these funds cannot be accounted for, but based on the fact that no shortfalls had been reported to me previously, it appears that any irregularities were likely caused by events that occurred shortly before the bankruptcy filing.

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. It was natural for me in my role to take on certain primary responsibilities in the week or so leading up to the bankruptcy such as addressing the credit rating downgrades and coordinating due diligence by potential acquirers. 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 24th, Moodys announced that it was downgrading MF Global's credit rating by one notch, leaving the firm with the lowest possible investment grade rating. From that point onwards, I was engaged continuously with all three rating agencies – Standard and Poor's, Moodys, and Fitch – in an effort to make sure the firm's credit rating was appropriate. The downgrades continued. MF Global announced disappointing quarterly results on October 25th, on October 26th, Standard and Poor's announced that it was considering cutting our credit rating to "junk" status, and on October 27th, Fitch and Moodys downgraded us by

multiple notches to below investment grade. The speed and severity of these downgrades were unprecedented in my experience and placed extraordinary pressure on the firm's liquidity.

In response to the ratings downgrades, the disappointing earnings announcement, and growing strains on liquidity, the firm retained an investment bank to explore a possible sale of the futures commission merchant business. As the situation deteriorated, the sale of the entire firm was ultimately also 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 in an extremely compressed time-frame. I worked on the due diligence and asset sale process 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 night (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. (I was told earlier that day there appeared to be a deficit in the segregation calculation and then shortly thereafter was told it had been resolved). For the next two hours or so, there was a collective effort to reconcile the unexplained deficit in the segregation calculation – a complex calculation requiring expertise to generate and reconcile. This reconciliation effort included assistance from both the investment bank assisting in the sale process and the remaining potential purchaser. (My subsequent understanding is that the regulators were also assisting in this reconciliation earlier in the day.)

Unfortunately, as the Committee is aware, the efforts to reconcile the segregation calculation were not successful. Around midnight, with time to complete a deal having run out,

a conference call with many participants was conducted in which the potential purchaser was formally told that the calculations showed a large under-segregation of customer funds. As might be expected, given the nature of the news and the limited time to finalize the acquisition, the deal to sell the company fell through and the holding company filed for bankruptcy the next day. I, along with others from MF Global, promptly notified our regulators about the segregation issues.

I understand that the Committee, 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 are missing.

I would be pleased to answer the Committee's questions. Thank you.

It is an honor to be here today. I want to thank Madam Chairwoman Stabenow, ranking member Senator Roberts, and other honorable senators of the committee for inviting me, and I especially want to thank my home state Senator Klobuchar for her continued support and help.

My name is Dean Tofteland. I am a farmer from southwest Minnesota. My wife and I raise corn, soybean, and pigs on our farm as well as four kids 8 to 15 years old. I have been a farmer for about 25 years. Throughout those years, I have used the futures markets to transfer risk from my farm to the Chicago Board of Trade by selling futures contracts. These transactions have enabled me and other farmers to lock in a selling price that could enable a potential profit on our farm.

My testimony today will be brief. I will first describe how the MF Global bankruptcy has impacted my bottom line and more importantly how this has influenced my confidence in these markets.

In October, following my harvest, I locked in prices on the Commodity Mercantile Exchange for my fall 2011 production. I did this by entering into an agreement where I promise to sell a set number of bushels at an agreed price that provided a margin of profit. To execute these hedges, I was required to post

margin to an escrow account held at JP Morgan Chase. These funds were not an investment in MF Global. These funds were not a loan to MF Global. These funds were collateral required by the exchange as a guarantee for my promise to deliver the bushels that I had priced.

On Friday, October 28th I heard news that MF Global may be having some problems. I immediately called my introducing broker. She told me that since my funds were in "customer segregated accounts," they were not a part of MF Global, and therefore would not be affected. I was told that "no customer has ever lost a penny in customer segregated accounts." At this time, I was not aware that the company was mailing bad checks to customers.

On Monday October 31st, I read that MF Global had filed for Chapter 11, and later, that customer funds were missing. The accounts had been frozen and I was unable to adjust my short positions. The hedge account at this time contained a value of \$253,000. This account was collateral for my operating loan with my bank.

Later, my positions were transferred to a new broker with only 15% of the required collateral. I was then informed that I needed to re-margin the hedges within 24 hours, even though I had more than three times the margin required in

the MF Global account. As a result of this, I was forced to liquidate these hedges. Since that time, prices have dropped significantly, resulting in well over an additional \$100,000 in lost equity.

On the morning of November 9th, I sat through a USDA Crop Production and Supply and Demand Report. This was one of the biggest crop reports of the year and being unable to adjust positions created a great deal of stress.

I have not used the futures market since.

Producers commonly purchase seed and fertilizer and pay cash rents months before the crops are planted. The use of these markets is imperative to reduce risk, but we must also have the confidence to do so. I have so far postponed my purchase of seed for 2012 because of this uncertainty.

As you know, this impact has been felt far across this country. Just in my backyard, feed companies like Mouw's Feed and Grain, who make livestock feed for farmers, and well as many livestock producers are looking for answers. Mark Greenwood from AGstar says he has over 100 of his clients trying to get their money back.

Business failures are nothing new. They happen every day on Main Street. The difference in this case is the missing money. We all know if our personal bank account is one penny overdrawn, the bank knows about it. These assets were in real banks. And in real banks, for every debit there is also a credit. I think these banks can provide some answers. What they call “unlawful comingling” on Wall Street is called “stealing” back on Main Street.

In my belief, we need to take a hard look at several areas of concern.

First we need to review and standardize practices at the accounting and audit firms. The problem is their services are paid for by the firm under the audit. This creates a conflict of interest on some cases.

Second we need some type of review of the rating agencies. They have a poor track record. The public depends on these agencies and they are consistently late in the game with their ratings. And we need to question whether the inside information they may provide is used to manipulate and force an insolvency?

Third, we may need more industry sponsored funding for the CFTC and SEC so they can enforce and accomplish thorough due diligence. In addition, the employees should be required to take a “no conflict of interest” test. And if there is any conflict of interest, the employee should resign not recuse.

Lastly, we need to look into banking practices and how any firm can access credit for 37 to 1 leverage. I know on Main Street we can only borrow 40 cents on the dollar. Why would a bank or creditor borrow 37 times leverage and expect not to lose? If there is an unsecured creditor or banker that made the bet on anyone with 37 times leverage they should be at the bottom of the recovery process especially if they have sequestered customer cash for their own use.

I know many of you have played the game of Monopoly. You all know how it ends, one or two players end up with all the money. Usually, there are two different endings to this game. One is where the losers walk away even as the winners try to convince them to stay and play some more, and second, someone eventually gets mad and tips the table over. And you all know who has to clean up the mess.

I want to thank each of you for inviting me. I encourage you to continue your hard work. I believe that in the end, we will get the answers we need and it will make for a more efficient and confident market place where the customer money is safe.

Thank you.

QUESTIONS AND ANSWERS

DECEMBER 17, 2011

Senate Committee on Agriculture, Nutrition & Forestry
Investigative Hearing on the MF Global Bankruptcy
December 13, 2011
Questions for the Record
Mr. Bradley Abelow

Senator Pat Roberts

1) Please provide to the committee an organization chart and detailed explanation of MF Global Holdings, Ltd. and MF Global Inc.'s organizational structure and chain of command in general and also particularly with regard to your firm's Treasury Operations and Securities Operations divisions. Please provide duties for each position. In particular, the committee is specifically requesting that you provide the names of those individuals, and their responsibilities within MF Global, who were responsible for the physical execution of the transfer of funds in and out of your customers' segregated futures accounts.

Response

Enclosed is a chart depicting the legal structure of MF Global Holdings Ltd. as it existed at the time it filed for bankruptcy on October 31, 2011. As reflected on the chart, MF Global Inc., was a wholly owned subsidiary of MF Global Holdings USA Inc. which was, in turn, a wholly owned subsidiary of MF Global Holdings Ltd.

Also enclosed are organizational charts obtained from the company's Human Resources department in response to Senator Roberts' question. Unfortunately, after MF Global Holdings Ltd. filed for bankruptcy and MF Global Inc. was placed in liquidation under the Securities Investors Protection Act (SIPA), many of the employees reflected on these charts have ceased to be employed. In addition, the SIPA trustee has taken control of the management and records of MF Global Inc. As a result, it is difficult to determine whether the enclosed organizational charts were fully updated and accurate as of the date of the bankruptcy. Nonetheless, it appears that they accurately reflect the general structure of the company, the reporting lines and the functions of the various departments and employees.

At the time of the bankruptcy filing, I was the President and Chief Operating Officer of MF Global Holdings Ltd. I reported directly to Mr. Corzine, who was then the Chief Executive Officer. The first page of the organizational chart reflects that twelve other executives reported to Mr. Corzine, including the heads of the company's geographic regions and business lines, as well as the Chief Financial Officer and the General Counsel. Page 210 of the Human Resources chart reflects that the following people formally reported to me: Thomas Connolly, Senior Vice President, Human Resources; Stephen Grady, Executive Vice President, Client Solutions Group; Neil Hatton, Vice President, Head of Prudential Risk Management and Special Liaison to the Financial Services Authority (UK); Steven Kass, Executive Vice President, Corporate Strategy/Corporate Program Office; Avram Kornberg, Senior Vice President, Chief Information Officer; Nancy Martori, Vice President, Special Projects in Business Development; Charlene Roberts, Executive Assistant; David Simons, Senior Vice President, Global Head of Operations; Jeremy Skule, Senior Vice President, Head of Marketing & Communications; and Michael Stockman, Senior Vice President, Chief Risk Officer. Although not reflected on the charts (which I understand only reflect single reporting lines), the following people had a dual or dotted-line reporting relationship with me: Lars Oleson, the Chief Operating Officer for Europe; and Joshua Zeitz, who was chief of staff to Mr. Corzine but also reported to me with respect to Corporate Services. To the best of my recollection and understanding, Jeremy Skule's primary reporting relationship was with the Chief Financial Officer.

As reflected on the organizational charts, the Treasury Operations function for MF Global, Inc., which was responsible for the physical execution of the transfer of funds in and out of MF Global Inc.'s cash accounts, was carried out by approximately 10 individuals in Chicago. The names reflected on the charts are Tina Bryant, Yudell Wade, Tiajuana Allen,

Janice Greene, Michelle Balderrama, Sarah Howgate, Charles Steed, Jr., Sheila Lane and Veronika Svirid. These individuals were supervised by Christina Vavra, who was also located in Chicago. Ms. Vavra reported to Timothy Mundt, a Senior Vice President for Operations located in Chicago. Mr. Mundt reported to Robert Lyons, a Senior Vice President for Operations in North America, located in New York. Mr. Lyons reported to Mr. Simons, who, as mentioned above, was the Global Head of Operations and reported to me. To the best of my recollection and understanding, the personnel in Treasury Operations were responsible for carrying out the physical execution of the transfer of funds, including customer funds, but the instructions to move funds would typically come from elsewhere in the firm, depending on the reason for the transfer.

The securities operations function was similarly responsible for the physical execution of transfers involving securities accounts. As reflected on the charts, with respect to North America, the executive responsible for securities operations was Richard Gill, a Senior Vice President for Operations located in New York. Mr. Gill reported to Mr. Lyons who, in turn, reported to Mr. Simons. Pages 446-451 of the enclosed charts depict the organizational structure that reported to Mr. Gill with respect to different kinds of securities (e.g., fixed income and equities). To the best of my recollection and understanding, these individuals would generally not have had a role in the transfer of segregated futures customer funds.

Senate Committee on Agriculture, Nutrition & Forestry
Investigative Hearing on the MF Global Bankruptcy
December 13, 2011
Questions for the Record
Hon. Jon S. Corzine

Senator Max Baucus

1) CFTC's regulation 1.10 requires an FCM to file monthly financial reports. Each report must be filed with an oath or verification and if the FCM is a corporation, such as MF Global was, it must be signed by the CEO or CFO.

Who at MF global signed this reports, the CEO or CFO?

Response: I don't recall ever being asked to sign, or signing, the monthly reports that were filed on behalf of the FCM.

2) Once the reports are completed and signed who are they sent to?
DRSO or CME in this instance or the CFTC?

Response: I did not have responsibility for the preparation of the monthly reports that were submitted on behalf of the FCM. I understand, however, that each month the reports were submitted to the appropriate authorities, including the CFTC and the CME.

3) Who signed the October 2011 monthly financial report?

Response: I do not know if the October 2011 monthly financial report was submitted on behalf of MF Global. If it was submitted, I did not sign the report.

Senator Saxby Chambliss

1) On Friday December 9, 2011, the trustee liquidating the brokerage of MF Global Holdings stated he had uncovered "suspicious" trades made from customer accounts in the days before the company collapsed and that the suspicious transfers appear to have a significant shortfall.

Are you aware of any instances prior to the bankruptcy in which there were shortfalls in customer funds? Is it possible that such shortfalls could have gone undetected by you or other senior management?

Response: Late in the evening on Sunday, October 30, 2011 I was alerted that certain accounts had not been reconciled. Prior to that evening, I had never been alerted that there were any significant discrepancies in the daily reconciliation of the customer accounts. During my tenure

at MF Global, I understood that we had the people and procedures in place that were necessary to ensure that MF Global remained in compliance with all relevant rules and regulations.

Followup Questions from Senate Agriculture Hearing
“Investigative Hearing on the MF Global Bankruptcy”
December 13, 2011

Senator Pat Roberts

1) Please provide to the committee a copy of MF Global’s daily segregation report that was submitted to the CME for Wednesday October 26, Thursday October 27 and Friday October 28, 2011 including any revised reports that were submitted corresponding to these dates.

Answer:

Segregation reports are submitted to both CME as the DSRO and the CFTC. We have communicated with your staff and understand that they are seeking these reports from the CFTC.

Senator Saxby Chambliss

1) In your testimony, you refer to the Thursday October 27 segregation report being “corrected” on the following Sunday. How can a segregation report be “corrected?” Is it normal for a firm to correct a report even in instances where illegal activity is not alleged?

Answer:

Per CME’s public timeline, MF Global filed its revised segregation report for Thursday October 27 at 7:46pm on Monday, October 31, many hours after the bankruptcy proceeding was filed. Segregation reports and capital statements are submitted to CME electronically. A firm can submit a new report for a date where a report was previously filed, and we would expect a firm to do so if it discovered a material mathematical or accounting error in a previously-filed report. Corrections are a very rare occurrence.

2) Can you provide the committee with an understanding of how you might use your “guaranty fund” to make customers whole with respect to MF Global? Under what circumstances the “guaranty fund” might be used?

Answer:

We are intent on securing the return of customer property, however, CME is not an insurer and may not use the guaranty fund to guarantee against the fraud or misconduct of the firm chosen by customers to hold their property. The guaranty fund does not belong to CME and may only be used to protect against the systemic risk that arises when a clearing member defaults to the clearing house and its positions must be assumed and liquidated by the clearing house. In the case of MF Global, the clearing member (MF Global) did not default to the clearinghouse.

Nearly 65 different U.S. FCMs hold approximately \$155 billion in U.S. customer collateral and nearly \$40 billion in collateral held for trading on foreign exchanges — much of which is not placed with regulated clearing houses. Through March 2011, the total amount of customer funds held by the top 30 FCMs was more than \$163 billion. No clearing house, however large, could effectively or economically guarantee all such funds and all such activity.

3) Audits seem to be a major tool for DSROs by which to monitor FCMs. Do audits reliably predict future behavior? Will increasing the frequency of required audits help us stop fraudulent activity?

Answer:

Audits by their nature look at past activity. Even audits that show consistent compliance cannot predict aberrant, possibly criminal, future behavior. Increasing the frequency of audits is not likely to prevent misuse of customer funds in unusual circumstances.

Senator Mike Johanns

1) Mr. Duffy, you indicated in your testimony before the Senate Agriculture Committee that on Saturday, December 10th, you were told by a CME lawyer that Governor Corzine was aware that “loans...had been made from the customer segregated accounts.” Given this statement, please answer the following questions.

This information regarding loans made from the customer segregated accounts was not in the written statement that you submitted to the Committee. When did you decide to share this detail with the Ag Committee?

If it was before the hearing, why was the information not disclosed to the Committee prior to these discussions? If it was during the hearing, what was said and by whom that made you decide to include it?

Answer:

I stated in my testimony before the Senate Agriculture Committee that a CME auditor participated in a phone call with senior MF Global employees wherein one MF Global employee indicated that Mr. Corzine knew about loans that had been made from the customer segregated accounts. I learned of this information over the weekend, after having submitted my written testimony to the Committee on Friday, December 9. My staff informed the Committee staff of this information prior to my testimony before the Committee.

Who is the CME attorney that first informed you of this information? Was he or she present at MF Global during the conversation with the affiliate?

Answer:

The CME attorney who informed me of this information was not present during the conversation.

What are the names of the individuals on the call when the CME auditor was made aware of this information?

Answer:

The individuals on the call were Christine Serwinski, the CFO of MF Global Inc., and Kemper Cagney, the CFO of MF Global UK.

What is the name of the MF Global affiliate company and the person who revealed this information? And, under what context did the employee of the affiliate report this information? Was it voluntarily offered or in response to the discovery of transferred funds?

Answer:

The statement concerning Mr. Corzine was made by Ms. Serwinski who was discussing with Mr. Cagney the possible return of \$175 million to MF Global Inc. from MF Global UK. The statement was made in relation to the discovery of the shortfall in customer segregated funds.

Is it the case that the affiliate did not report this information for over a month? If so, what is the reason for this delay?

Answer:

The CME auditor learned of this information on October 31, 2011 when the CME auditor was present during the conversation between Serwinski and Cagney. The CME auditor disclosed the information to CME's attorneys during the course of preparation for interviews by the CFTC, SEC and DOJ. I was made aware of the information over the weekend of December 10-11, 2011 in the course of preparation for the hearings before the Senate Agriculture Committee and House Oversight & Investigations Subcommittee of the House Financial Services Committee.

On what date was the loan made to the MF Global affiliate?

Answer:

Without access to MF Global's financial and bank records, CME cannot say with any degree of certainty the date on which the loan to MF Global UK was made.

Have you identified other affiliates who received similar loans or transferred funds?
What are their names/company names?

Answer:

As stated above, without access to MF Global's financial and bank records, CME cannot say with any reasonable degree of certainty whether there were loans to other MF Global affiliates.

Did any of them have similar knowledge of Governor Corzine's involvement?

Answer:

CME does not have sufficient knowledge to answer this question.

Please include all names of any employees of MF Global and its affiliates who have indicated that Governor Corzine or other senior employees knew of any improper loans or movement of funds from segregated accounts.

Answer:

CME is not aware of any employees of MF Global or its affiliates who have indicated that Governor Corzine or other senior employees knew of improper loans other than as stated in answers to questions above.

Senator John Boozman

1) Should the bankruptcy proceedings not return all of the Customers' segregated funds, will the CME and make the MF Global customers whole as strongly communicated under the financial safeguards' in place and implied in the CME publication entitled *CME Clearing Financial Safeguards*?

Answer:

We are intent on securing the return of customer property, however, CME is not an insurer and never explicitly or impliedly promised that it would use the guaranty fund or its shareholders' assets to guarantee against the fraud or misconduct of the firm chosen by customers to hold their property. The guaranty fund does not belong to CME and may only be used to protect against the systemic risk that arises when a clearing member defaults to the clearing house and its positions must be assumed and liquidated by the clearing house. To the contrary, the CME's description of its Financial Safeguards explicitly warns customers of those risks. The following excerpts from the publication demonstrate that point.

Segregation of Customer Funds

Regulations governing the U.S. futures and options on futures markets require that customer positions and monies be separately accounted for and segregated from the positions and monies of the clearing member. The regulations are designed to protect customers in the event of the insolvency or financial instability of the clearing member through which they conduct business. The requirements of separate accounting and segregation of customer positions and monies extend to CME Clearing. CME Group's Audit Department routinely inspects the books and records of clearing members to ensure, among other things, their compliance with segregation requirements. **The integrity of segregation relies on the accuracy and timeliness of the information provided to CME Clearing by member firms. Violations by a clearing member of its segregation requirements are considered serious infractions and can result in major penalties imposed by the governing entity.** Although OTC markets are unregulated, CME intends to utilize standards established by CFTC Regulation 30.7 to ensure customer protection for these products. These standards will be similar to the protections afforded to customers trading futures and options in offshore markets. However, CME continues to work with applicable regulatory bodies to obtain segregation treatment under Part 4(d) of the Commodity Exchange Act for CME's cleared OTC markets in order to provide protection identical to customers' futures and options positions. Additionally, cleared OTC markets are subject to CME Clearing's standard risk management practices.

Customers face credit risk in doing business through any particular clearing member. Consequently, the selection process for a suitable clearing member is important. While the policies applicable to segregation of customer monies for products traded in regulated markets are specifically designed to protect customers from the consequences of a clearing member's failure, they do not always provide complete protection should the default be caused by another customer at that firm. Protection against a customer-caused default rests primarily with the management of the clearing member and the importance placed on its internal risk management controls. Generally, a clearing organization's role in the customer protection process is to monitor risk management requirements and oversight, require all customers to post adequate performance bonds, administer financial surveillance programs designed to monitor the financial viability of clearing members and, when necessary, to impose specific remedies in an effort to avert the consequences of financial deterioration.

Financial Surveillance

Recognizing the need to monitor the financial condition of clearing members, the CME Group Audit Department, in conjunction with other self-regulatory organizations, operates a sophisticated financial surveillance program. The program has several important aspects, as outlined below: Reporting: Clearing members must calculate segregation and secured requirements and ensure compliance with capital requirements on a daily basis. In addition, firms must submit to the Audit Department full financial

statements monthly, provide certified financial statements once a year, and submit more frequent reports (daily or weekly) as directed.

Senate Committee on Agriculture, Nutrition & Forestry
Investigative Hearing on the MF Global Bankruptcy
December 13, 2011
Questions for the Record
Mr. James W. Giddens

Senator John Boozman

1) Once it is determined where the customers segregated money was sent, legally or illegally, will you file a motion with the Bankruptcy Judge demanding the stolen assets or money be returned to the rightful owners and/or the MF Global segregated funds customers?

We are in regular communication with the Bankruptcy Court as our investigation continues. We file status reports on our efforts and seek judicial guidance and approval for many of our actions.

As the customers' advocate, I am focused on returning as much customer property as possible as quickly as possible in a manner that is fair and consistent with the applicable provisions of the Securities Investor Protection Act, the bankruptcy code and CFTC regulations.

My primary goal and aspiration is to pay commodities claimants and securities customers 100% of the amounts in their accounts. Ultimate distributions are, of course, dependent upon assets available and there is no assurance of a 100% return.

I will use all legal avenues available to me in recovering customer funds. If we determine assets can be appropriately recovered from an entity, I can assure you that I will use all legal options available to me, including negotiations and litigation, to do so. These cases are complex and could take months or years to resolve. If litigation is required, a trial might well be necessary, with discovery, witnesses, and a proceeding before a judge.

Senate Committee on Agriculture, Nutrition & Forestry
Investigative Hearing on the MF Global Bankruptcy
December 13, 2011
Questions for the Record
Commissioner Jill Sommers

Chairwoman Stabenow

1) One lesson from the 2008 financial crisis is the devastating consequence of excessive leverage. When companies, like MF Global, take large investment risks relative to the assets they hold, they become vulnerable to even small downturns in the market. Those failures threaten the larger economy. It has been reported that MF Global was leveraged 30-to-1 at the time it declared bankruptcy. Do you consider this an appropriate level of leverage? How does the CFTC define excessive leverage? Did MF Global's level of leverage contribute to its failure? What authorities do regulators like the CFTC have to curb excessive leverage of registered companies? What should regulators like the CFTC do to curb excessive leverage of registered companies?

Response – MF Global was a dually-registered Broker-Dealer (BD)/Futures Commission Merchant (FCM). For dually-registered BD/FCMs, futures regulators review the futures activity of the FCM (which includes activity on behalf of futures customers and proprietary trading activity of the FCM), while the SEC and FINRA review the securities activity of the BD. The leveraged investments referred to in this question were securities investments subject to the oversight of the SEC and FINRA. The question of what level of investment risk is appropriate for a BD's proprietary securities trading, how that risk is or should be managed, and what authority exists to curb the leverage associated with a BD's securities trading, is better directed to the SEC and FINRA. That said, a registered FCM is authorized to engage in proprietary futures trading. If it does so, the CFTC has robust margin and capital rules that apply to that trading. An FCM is obligated to post with a derivatives clearing organization (DCO) initial margin that the DCO requires on the open proprietary futures positions. The open futures positions are marked-to-market daily, with variation margin payments required daily for any losses incurred. These daily variation margin payments act to limit leverage associated with the proprietary futures trading because losses are paid daily and are not allowed to build. Moreover, if an FCM engages in proprietary trading, in addition to the capital charges required for its customers' futures activity, the FCM is required to take a capital charge of at least 100% of the margin required on its open proprietary futures positions.

Senator Pat Roberts

1) Please provide a list or description of Chairman Gensler's participation in matters directly or indirectly relating to MF Global, Inc. or MF Global Holdings Ltd. since his "statement of non-participation" of November 9, 2011?

Response – I do not have information sufficient to answer this question. Questions concerning what matters Chairman Gensler has participated in, either directly or indirectly, since November 9, 2011 are better directed to him.

Senator Saxby Chambliss

1) Jon Corzine and MF Global are accused of exploiting a loophole in US law to make risky trades. Is it plausible that the short falls in the segregated accounts are not a violation of the Commodities Exchange Act?

Response – Any shortfall in a Section 4d customer account is a violation of the Commodity Exchange Act. In addition, there is no provision in the Commodity Exchange Act or Commission Regulations that allows a BD/FCM to make risky trades with customer funds that are required to be segregated in a Section 4d customer account. An FCM, however, is permitted under Regulation 1.25 to invest customer funds in a list of "permitted investments." Regulation 1.25 contains limitations on the types of "permitted investments" with the goal of preserving principal and maintaining liquidity. Regulation 1.25 further requires that any investment of customer funds be done on a payment versus delivery basis. That is, any cash removed from the Section 4d customer account must have a contemporaneous deposit of permitted investments into a Section 4d segregated account.

2) Do you believe there are any needed changes to the rules governing rehypothecation and does the CFTC recognize the Federal Reserve's Regulation T and the SEC's Rule 15c3-3? Should the CFTC propose new rules for rehypothecation and if so, are you concerned that new rules would affect liquidity?

Response – The CFTC does not allow rehypothecation of customer funds held in a Section 4d segregated account, and I do not believe that should be changed. The CFTC allows an FCM that receives customer funds to post those funds with a DCO to support that customer's futures positions, but that is not rehypothecation. The CFTC is aware of Regulation T and Rule 15c3-3, but there are no comparable provisions in Commission Regulations. Laws of foreign jurisdictions may allow rehypothecation of commodity customer funds held by affiliates in those jurisdictions.

Senate Committee on Agriculture, Nutrition & Forestry
Investigative Hearing on the MF Global Bankruptcy
December 13, 2011
Questions for the Record
Mr. Henri Steenkamp

Senator Pat Roberts

1) Please provide to the committee a copy of MF Global, Inc. and MF Global Holdings Ltd. internal conduct controls in the area of Treasury Operations and Security Operations.

2) If you cannot obtain a copy, please identify with specificity and contact information who would likely possess a copy.

Response: While Mr. Steenkamp is not entirely clear regarding the meaning of "internal conduct controls," the referenced areas (Treasury Operations and Security Operations) did not report to Mr. Steenkamp, and he is not generally in possession of documents relating to those areas. We respectfully refer the Senator to the respective Trustees of MF Global, Inc. and MF Global Holdings Ltd. for any such documents.

Senator Max Baucus

1) CFTC's regulation 1.10 requires an FCM to file monthly financial reports. Each report must be filed with an oath or verification and if the FCM is a corporation, such as MF Global was, it must be signed by the CEO or CFO.

a) Who at MF global signed this reports, the CEO or CFO?

2) Once the reports are completed and signed who are they sent to?

a) DRSO or CME in this instance or the CFTC?

3) Who signed the October 2011 monthly financial report?

Response: As a broker-dealer, MF Global, Inc. filed monthly FOCUS reports. FOCUS reports were signed by the CFO of MF Global, Inc. The reports were filed electronically with FINRA and through the NFC Windjammer system. We understand that the Windjammer system makes the reports available to (among others) the CBOE, CME and CFTC. To the best of Mr. Steenkamp's knowledge, a FOCUS report was not filed for October 2011, but we would respectfully refer the Senator to MF Global, Inc. personnel for any additional information regarding filings by that entity.

