

Hindsight Application

No 9527 of 2011

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

Before the Honourable Mr Justice David Richards

On 18th day of June 2012

IN THE MATTER OF MF GLOBAL UK LIMITED (in special administration)

AND IN THE MATTER OF THE INVESTMENT BANK SPECIAL ADMINISTRATION
REGULATIONS 2011



ORDER

UPON the application of Richard Heis, Michael Robert Pink and Richard Dixon Fleming of KPMG of 8 Salisbury Square London EC4Y 8BB as joint administrators of the above named Company by their application notice dated 3 May 2012 made pursuant to paragraph 63 of Schedule B1 to the Insolvency Act 1986 as applied to these proceedings without modification by regulation 15 of The Investment Bank Special Administration Regulations 2011,

UPON hearing Counsel for the Administrators,

UPON hearing Counsel for Representative Party A,

UPON hearing Counsel for Representative Party B,

AND UPON reading the evidence,

IT IS ORDERED that: -

Definitions

1. For the purpose of this Order, the following terms have the following meanings:

Administrators, the	Richard Heis, Michael Robert Pink and Richard Dixon Fleming of KPMG of 8 Salisbury Square London EC4Y 8BB as administrators of MFGUK
CASS	Client Assets sourcebook
client	a client as defined by the FSA's Handbook (and the Glossary) who has a client money entitlement in respect of an open position
client money	money that is client money as defined by CASS 7
client money entitlement, a client's	the entitlement of a client to share in a distribution of the CMP calculated in accordance with CASS 7A
Client money rules or CASS 7	Chapter 7 of CASS as at 31 October 2011
Client money distribution rules or CASS 7A	Chapter 7A of CASS at 31 October 2011
Client money pool or CMP	the notional pool of client money constituted as at the PPE in accordance with CASS 7A
FSA	Financial Services Authority

FSA's Handbook, the	the FSA's Handbook of rules and guidance
FSMA	Financial Services and Markets Act as amended as at 31 October 2011
Hindsight Application, the	the application by the Administrators' application notice dated 3 May 2012, requesting directions as to the question in the schedule to this order
Insolvency Act, the	Insolvency Act 1986 as amended as at 31 October 2011
liquidation value, the	the value of an open position as at the date that position was closed-out
MFGUK	MF Global UK Limited (in special administration)
open position, an	a transaction, whether a margined transaction or not, between MFGUK and a client or a creditor open as at the PPE
primary pooling event	an event that occurs in the circumstances described in CASS 7A.2.2R
PPE	the primary pooling event in relation to MFGUK, which event occurred on 31 October 2011 at 17 00
Regulations, the	The Investment Bank Special Administration Regulations

	2011
Rules, the	The Investment Bank Special Administration (England and Wales) Rules 2011
Representative Party A	a client of MFGUK with an open position as at the PPE closed after the PPE with a liquidation value less than the marked to market value of that position as at the PPE
Representative Party B	a client of MFGUK with an open position as at the PPE closed after the PPE with a liquidation value greater than the marked to market value of that position as at the PPE
representative respondents, the	Representative Party A and Representative Party B
Schedule B1	Schedule B1 to the Insolvency Act

Hearing

2. A hearing be fixed for the convenience of Counsel to start on the first available date after 15 October 2012 with a time estimate of three days (which estimate shall include one day for pre-reading) before the Honourable Mr Justice David Richards at which time the Court will give directions on the question in the Schedule to this Order ("**the hearing**").

3. The Administrators and the representative respondents shall have liberty to vary the question in the Schedule to this Order by agreement or, failing agreement, to apply to the Court to vary the same.

Further Directions

4. Pursuant to CPR r 19.6(2) or r 19.7(2), as applicable, the following parties shall be appointed as representative respondents: -
 - (1) **Attestor Value Master Fund LLP** as Representative Party A for clients whose open position(s) had a liquidation value **less** than the marked to market value as at the PPE; and
 - (2) **Schneider Trading Associates Limited** as Representative Party B for clients whose open position(s) had a liquidation value **greater** than the marked to market value as at the PPE.
5. The Administrators have permission to apply to join or appoint further or other representative respondents.
6. The representative respondents shall file and serve on each other and on the Administrators and the FSA any evidence of fact by 4.30pm on 16 July 2012.
7. The FSA shall file and serve on the representative respondents and the Administrators any evidence of fact by 4.30pm on 30 July 2012.
8. The representative respondents shall file and serve on each other and on the Administrators and the FSA any evidence of fact in reply (including in reply to any evidence filed by the FSA) by 4.30pm on 20 August 2012.

9. Without prejudice to the admissibility of any expert evidence, each representative respondent shall notify the other and the Administrators in writing by 4.30pm on 2 July 2012 of any issue upon which they would wish to adduce expert evidence. Upon receipt of such notice, the representative respondents and the Administrators shall seek to agree between themselves whether such expert evidence should be admitted. If agreed, the representative respondents and the Administrators shall together apply to admit such evidence by 16 July 2012, which application shall be dealt with on paper unless the Court should otherwise direct following receipt of the application notice and brief written submissions. If not agreed, the representative respondent wishing to adduce such evidence notwithstanding the absence of agreement shall apply to admit such evidence by 16 July 2012 joining the other representative respondent and / or the Administrators, which application shall be dealt with on paper unless the Court should otherwise direct following receipt of the application notice and brief written submissions.
10. The Administrators shall file and serve any further evidence of fact and any evidence in rejoinder by 4.30pm on 3 September 2012.
11. No person other than the Administrators, the FSA or the representative respondents shall address the Court on the question in the Schedule to this Order without the permission of the Court. Any client wishing to have an argument advanced on their behalf should notify in writing the solicitors for the appropriate representative respondent.
12. The Administrators file and serve on the representative respondents and the FSA a copy of their skeleton argument for the hearing by 4.30pm on 24 September 2012.

13. The FSA file and serve on the Administrators and the representative respondents a copy of their skeleton argument for the hearing by 4.30pm on 1 October 2012.
14. The respondents file and serve on the Administrators and the FSA and on each other a copy of their respective skeleton arguments for the hearing by 4.30pm on 8 October 2012.

Costs

15. The costs of each of the representative respondents (subject to detailed assessment on the indemnity basis if not agreed) of and incidental to the Hindsight Application to the date of the conclusion of the Hindsight Application (including to the date of the hand-down of any judgment and any arguments in relation to costs at such hand-down but not any detailed assessment) shall be paid from the CMP.
16. The costs of the Administrators of and in relation to the Hindsight Application shall be paid from the CMP.

SCHEDULE

Whether a client's client money entitlement in respect of an open position is to be valued as at the PPE (i) by reference to the market value or any mark-to-market value as at the PPE; or (ii) by reference to the liquidation value?

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