

**In the matter of the Bankruptcy of  
MF Global Canada Co. ("MFGCC")**

**FAQ'S FOR PREFERRED AND ORDINARY UNSECURED CREDITORS, INCLUDING SUPPLIERS AND FORMER EMPLOYEES**

**First Meeting of Creditors and Filing of Claims**

**Who is a "Creditor" in a securities firm bankruptcy?**

Essentially, a creditor is a person who supplied goods and services to MFGCC (such as a vendor), employees, or those who earned commissions from MFGCC, etc.

**Who is a Preferred Creditor?**

Preferred Claims potentially applicable in this estate include anyone who has a claim for the following:

- The lessor for arrears of rent for a period of three months immediately preceding the bankruptcy and accelerated rent for a period not exceeding three months following the bankruptcy if entitled to accelerated rent under the lease, but the total amount so payable shall not exceed the realization from the property on the premises under the lease, and any payment made on account of accelerated rent shall be credited against the amount payable by the trustee for occupation rent; and,
- Claims resulting from injuries to employees of the bankrupt in respect of which the provisions of any Act respecting workers' compensation do not apply, but only to the extent of moneys received from persons guaranteeing the bankrupt against damages resulting from those injuries.

**Who is an Ordinary Unsecured Creditor?**

An Ordinary Unsecured Creditor is someone who does not have a Customer Claim or one of the types of claims listed above. Essentially an ordinary unsecured creditor is a supplier for goods and services or an employee for termination and severance pay or for wages.

**How do I/we complete a Creditor Proof of Claim form as a Supplier?**

Fill in the entire first section including the person the Trustee should contact to ask any questions arising from the filing of the claim.

In the next Section in paragraph 1. After "THE UNDERSIGNED CERTIFIES AS FOLLOWS" write in your title and the company (i.e. "That I am Controller of ABC Co.").

Under section 3 after the "\$" fill in the amount your company is owed in total for all outstanding invoices.

Under section 4 part A "UNSECURED CLAIM" if you have an Ordinary Unsecured Claim check the spot for "I do not claim a right to priority." If you have a Preferred Claim check the spot for "I claim a right to priority under Section 136..."

In section 5 circle "am not".

At the bottom of the form after "Dated at" fill in the name of the city you were in when you completed the form (e.g. "Hamilton"). Next fill in the date you completed the form (e.g. "this 28<sup>th</sup> day of January, 2012").

Ensure that you sign the form in the space below "Creditor", have someone who knows you witness your signature (this can be anyone who knows you including a spouse) and have them sign below "Witness Signature" and ensure the witness prints their name and address on the form.

### **How do I complete a Proof of Claim as an Employee?**

Fill in your home address, telephone number and email address.

In the blank in the next paragraph after “claim of”, fill in your name.

Under section 3 after the “\$” fill in the amount you are owed in total for outstanding wages, vacation pay, termination and severance pay (if any).

Under section 4 part A “UNSECURED CLAIM” check the spot for “I do not claim a right to priority” for the amount you are owed (if any) for termination and severance pay ONLY.

In section E “CLAIM BY WAGE EARNER” fill in the total amount you are owed for outstanding wages and vacation pay ONLY (if any) (do not include any termination or severance pay owing) and fill that same amount on the line first line below that states “That I hereby make a claim under subsection 81.3(8) of the Act in the amount of \$”.

In section 5 circle “am not”.

At the bottom of the form after “Dated at” fill in the name of the city you were in when you completed the form (e.g. “Hamilton”). Next fill in the date you completed the form (e.g. “this 28<sup>th</sup> day of January, 2012”).

Ensure that you sign the form in the space below “Creditor”, have someone who knows you witness your signature (this can be anyone who knows you including a spouse) and have them sign below “Witness Signature” and ensure the witness prints their name and address on the form.

### **What if I/we move?**

It is imperative, that you notify the Trustee **IN WRITING** via email to [mfglobalcanada@kpmg.ca](mailto:mfglobalcanada@kpmg.ca) or the mailing address on the proof of claim form (**DO NOT CALL WITH YOUR NEW ADDRESS WE NEED THE CHANGE IN WRITING**), if you move after you send in the claim form but before the bankruptcy file is closed.

### **Who has to complete a Proxy form?**

Those who are representing a company and wish to attend and vote at the meeting of creditors need to complete a proxy form setting out the name of the individual who will be representing the company and voting on behalf of the company at the meeting of creditors.

If you are an individual with a claim and plan to attend in person, you do not need to complete a proxy; however, if you wish to allow another person to vote on your behalf at the meeting of creditors, you will need to complete a proxy form appointing that person as your proxy at the meeting.

### **How do I complete a Proxy form?**

A creditor may vote either in person or by proxy. The Trustee may be appointed as a proxy for any creditor. In order for a duly authorized person to have a right to vote at the meeting, the person must either be a creditor or hold a properly executed proxy (the name of the creditor must appear on the proxy).

### **What happens at the meeting of creditors?**

At the meeting of creditors, Customers and Unsecured Creditors who have outstanding claims in the estate and whom have filed either a Revised Net Equity Claim form or an Unsecured Creditor Claim form before the meeting of creditors, will be permitted to vote at the meeting subject to the review and approval of the claim by the Trustee.

The Bankruptcy and Insolvency Act ("BIA") places administrative control of an estate in the hands of the creditors. This control is exercised particularly at the first meeting of creditors, when the creditors:

- confirm the trustee's appointment (or substitute another trustee);
- provide the trustee with directions; and
- appoint a board of inspectors.

The inspectors are appointed as representatives of all creditors and occupy positions of trust. They are expected to assist the trustee by virtue of their experience and are required to supervise certain aspects of the trustee's administration.

The appointment of inspectors will be decided by ordinary resolution carried by the majority of votes. The votes of a creditor are calculated by counting one vote for each dollar of the creditor's claim. The substitution of the Trustee, however, is determined by special resolution where the outcome of the vote is dependent on a majority in number (counting by heads) and at least 75% in value of the votes.

Any officer, director or employee of MFGCC is not entitled to vote on the affirmation or replacement of the trustee or the appointment of inspectors.

A maximum of five Inspectors can be appointed.

### **What is the role of Inspectors?**

Inspectors give direction and advice to the trustee regarding specific actions to be taken in the administration of the estate. They also supervise the trustee's administration and ensure the trustee acts in accordance with their directions. An inspector is appointed in his/her personal capacity and is to act in the interest of all estate creditors.

In the case of a securities firm bankruptcy, such as MFGCC, the customer compensation body may designate an inspector to act on its behalf.

### **Who can be appointed an inspector?**

At the first meeting of creditors, the chairperson, who may be the Official Receiver or his or her nominee, asks creditors for suggested nominations to the board of inspectors. The appointment of inspectors is decided by ordinary resolution, carried by the majority of votes, and for that purpose the votes of a creditor are calculated by counting one vote for each dollar of every claim of the creditor. The creditors may also agree to not appoint inspectors.

The Act does not specify criteria for the appointment of inspectors. It does, however, stipulate that no person who is party to any contested action or proceedings by or against the estate of the bankrupt may be appointed an inspector. This excludes, for example, an officer, a director, a shareholder or a representative of a corporation that is party to any contested action or proceeding against the estate of the bankrupt.

Once appointed, inspectors cannot appoint some other person to represent them at a meeting of inspectors that they are unable to attend.

Although persons appointed as inspectors generally are creditors, a person who is not a creditor or a representative of a creditor can be appointed as an inspector. For example, a lawyer representing a client may be appointed an inspector.

If there is a dispute about who should be appointed as inspectors, the nominees who receive a majority of the votes cast at the meeting of creditors, either in person or by proxy, will be appointed.

It should be noted that inspectors do not represent their employers and must perform their duties in the best interests of all creditors. Inspectors must not act for their personal advantage and must make full and complete disclosure to the trustee and co-inspectors of their personal position any time there is a possible conflict of interest.

### **Wage Earner Protection Program Claims**

Former employees of MFGCC should have received their bankruptcy notice and proof of claim forms, a copy of the information the Trustee will be filing with Human Resources and Skills Development Canada as well as a notice regarding the Wage Earner Protection Program (“WEPP”). A copy of the WEPP notice is included on this website under the section “Unsecured Creditor Claims Materials”.

The Trustee understands that all former employees received all of their wages/salaries/commissions and vacation pay up to the date of bankruptcy. Therefore, the Trustee understands that former employees will potentially have claims for termination and severance. The Trustee understands that claims for termination and severance may be covered by the WEPP program (with certain exceptions for “Excluded Managers”) but only to a maximum of approximately \$3,000 (after deductions). In order to be eligible to make a claim under the WEPP, employees must file a Creditor proof of claim form with the Trustee. **You cannot file a claim under the WEPP before you receive the copy of the information the Trustee will be filing with Human Resources and Skills Development Canada.**