

**No 9527 of 2011**

**IN THE HIGH COURT OF JUSTICE**

**CHANCERY DIVISION**

**COMPANIES COURT**

**Before the Honourable Mr Justice David Richards**

**Dated 11 June 2013**

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

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

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**ORDER**

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**UPON THE APPLICATION** of (1) MF Global UK Limited (in special administration) (“**MFGUK**”) as trustee of the trust of client money under the client money rules (“**CASS 7**”) including the client money distribution rules (“**CASS 7A**”) of which the “*firm*” within the meaning of CASS 7.7.2R is MFGUK (the “**Client Money Trust**”); and (2) Richard Heis, (3) Michael Robert Pink and (4) Richard Dixon Fleming of KPMG, 8 Salisbury Square, London EC4Y 8BB, the joint administrators of MF Global UK Limited (the “**Administrators**”),

by their application notice dated 2 May 2013 made pursuant to rule 64 of the Civil Procedure Rules 1998 as amended (the “**CPR**”) and / or the inherent jurisdiction of the Court and / or paragraph 63 of Schedule B1 (“**Schedule B1**”) to the Insolvency Act 1986 (the “**Act**”) as applied without modification by regulation 15 of The Investment Bank Special Administration Regulations 2011 (the “**Regulations**”)

**AND UPON** reading the evidence

**IT IS ORDERED AND DIRECTED** that:

1. The procedure set out in the schedule hereto and marked “**A**” (the “**Client Money Distribution Procedure**”) shall apply for the purpose of ascertaining the claims of clients, and persons claiming to be clients, to share in a distribution of the Client Money Trust, and MFGUK and the Administrators shall be at liberty to act in accordance with that procedure.
  
2. If the Administrators give notice of intention to declare a dividend in accordance with Rule 6 of the Client Money Distribution Procedure, they shall be at liberty to cause MFGUK to distribute property or any part thereof of the Client Money Trust on the basis that:
  - (1) subject to each of subparagraphs 2(2) to 2(4) below, the only clients with a “*client money entitlement*” under CASS 7A.2.4R as against the Client Money Trust are the clients who have submitted a “**client money proof**” as defined in Rule 1 of the Client Money Distribution Procedure by 5 pm on “**the last date for proving**” as defined in Rule 6 of the Client Money Distribution Procedure;
  
  - (2) any client who appears to have a “*client money entitlement*” under CASS 7A.2.4R as against the Client Money Trust by virtue of information in the records of MFGUK but who, by 5 pm London time on the last date for proving, has not claimed an entitlement against the Client Money Trust does not have such an entitlement *provided that* MFGUK complies with Rule 11 of the Client Money Distribution Procedure;
  
  - (3) any person claiming an entitlement against the Client Money Trust (a “**Client Money Claimant**”) whose client money proof has been rejected does not have a “*client money entitlement*” under CASS 7A.2.4R as against the Client Money Trust *unless* that person has filed an application with the Court to appeal against that rejection and given notice to the Administrators of the filing of that application by the later of: (a) 5pm London time on the last date for proving; and (b) 30 days after the

Administrators have sent a statement under Rule 3(2) or a notice under Rule 3(3) (as applicable) of the Client Money Distribution Procedure;

- (4) any Client Money Claimant whose client money proof is accepted as to part (the “**accepted part**”), but rejected as to part (the “**rejected part**”) does not have a “*client money entitlement*” under CASS 7A.2.4R as against the Client Money Trust in respect of the rejected part *unless* that person has filed an application with the Court to appeal against the rejection of the rejected part and given notice to the Administrators of the filing of that application by the later of: (a) 5pm London time on the last date for proving; and (b) 30 days after the Administrators have sent a statement under Rule 3(2) or a notice under Rule 3(3) (as applicable) of the Client Money Distribution Procedure;
3. If the Administrators cause MFGUK to act in accordance with paragraph 2 above, neither MFGUK nor the Administrators shall be liable, with respect to any distribution made in accordance with that paragraph, to any client of MFGUK:
    - (1) of whom the Administrators were not actually aware as at 5pm London time on the last date for proving (and, for these purposes, the Administrators shall be deemed not to have been aware: (a) of clients who were treated as having no client money entitlement pursuant to paragraph 2(2) above; or (b) of any other clients who had not submitted a client money proof (as defined in the Client Money Distribution Procedure) by 5 pm on the last date for proving);
    - (2) who it is later established (by agreement or by the Court) has a client money entitlement but who had failed to file an application with the Court to appeal against the rejection of its client money proof and give notice to the Administrators of the filing of such application by the later of: (a) 5pm London time on the last date for proving; and (b) 30 days after the Administrators had sent a statement under Rule 3(2) or a notice under Rule 3(3) (as applicable) of the Client Money Distribution Procedure; or

- (3) whose client money entitlement is later agreed or established by the Court as being greater than the accepted part of its claim, but who had failed to file an application with the Court to appeal against the rejection of its client money proof and give notice to the Administrators of the filing of such application by the later of: (a) 5pm London time on the last date for proving; and (b) 30 days after the Administrators had sent a statement under Rule 3(2) or a notice under Rule 3(3) (as applicable) of the Client Money Distribution Procedure.
4. Any distribution from the Client Money Trust in accordance with paragraph 2 above shall be without prejudice to any entitlement of clients falling within any of paragraphs 3(1), 3(2) or 3(3) above:
  - (1) to participate in any subsequent distribution from the Client Money Trust subject to the provisions of the Client Money Distribution Procedure; and / or
  - (2) to pursue a claim, if any such claim is otherwise available to them (without acknowledging any such claim), to follow or trace and claim against clients in receipt of any part of the distribution from the Client Money Trust made in accordance with paragraph 2 above prior to the agreement or establishment of their claim.
5. For the avoidance of doubt, the Administrators shall act in accordance with this order and the Client Money Distribution Procedure solely as agents of MFGUK in its capacity as trustee of the Client Money Trust, and nothing in this order or in the Client Money Distribution Procedure or in the performance thereof shall result in the Administrators assuming liability as trustees.
6. The costs of and occasioned by the Application shall be paid as costs properly attributable to the distribution of the Client Money Trust within the meaning of CASS 7.7.2R(4).
7. MFGUK and the Administrators shall have liberty to apply to the Court including to vary or modify the terms of this Order and the Client Money Distribution Procedure.

## SCHEDULE A

### Client Money Distribution Procedure

In this Schedule:

Any expression not defined herein has the meaning defined in the Order or, as applicable, in CASS 7 and CASS 7A and other provisions of the FCA's Handbook including the Glossary thereto as at 31 October 2011.

**"Distribution Application"** means the application by the application notice dated 2 May 2013 by which MFGUK and the Administrators applied for permission to act in accordance with the terms of this Schedule.

**"business day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

**"Claim Form"** means a client money claim form, completed to the satisfaction of the Administrators, in the form available from the MFGUK pages of the KPMG website at: (<http://www.kpmg.com/UK/en/IssuesAndInsights/ArticlesPublications/Pages/MF-Global-Client-Creditor-claims-forms.aspx>).

**"Court"** means the High Court of Justice of England and Wales, Chancery Division, before Mr Justice David Richards or such other Judge as may be assigned from time to time to the special administration proceedings of MFGUK; or any appellate court with jurisdiction to hear appeals therefrom.

**"Order"** means the order, on the Distribution Application, to which this Client Money Distribution Procedure is scheduled.

**"Rule"** means each of the sections of this Client Money Distribution Procedure numbered 1 to 12.

**"Settlement Agreement"** means a settlement agreement fixing the value of a client's client money entitlement, in the form sent by the Administrators to the client in question.

**"sub-paragraph"** means each of the sub-sections of the Rules in this Client Money Distribution Procedure numbered in the format (1), (2) etc.

#### Claiming for a client money entitlement

1.—(1) A person claiming to have a client money entitlement (a **"Client Money Claimant"**) and wishing to recover their client money entitlement in whole or in part must (subject to any order of the Court to the contrary) submit or have submitted their claim in writing to the Administrators; and they may do so or have done so by way of a Claim Form or a signed Settlement Agreement.

(2) A Client Money Claimant is referred to as **“proving”** for their client money entitlement and a document by which a Client Money Claimant seeks to establish their claim is their **“client money proof”**.

(3) Subject to the next sub-paragraph, a client money proof (other than a signed Settlement Agreement) must take the form of a Claim Form and must contain sufficient information to enable the Administrators to reach a decision on the admissibility of the claim.

(4) The Administrators may call for any document or other evidence to be produced, where they think it necessary for the purpose of adjudicating on the whole or any part of the client money proof.

### **Costs of proving**

2. Unless the Court otherwise orders—

(a) every Client Money Claimant shall bear the cost of proving their own entitlement, including costs incurred in providing documents or evidence under Rule 1; and

(b) costs incurred by MFGUK and by the Administrators in assessing a Client Money Claimant’s client money entitlement, including the costs of and occasioned by any appeal under Rule 4, are payable from the Client Money Trust as costs properly attributable to the distribution of the Client Money Trust (without prejudice to any right MFGUK and/or the Administrators may have to recover their costs of an appeal from the Client Money Claimant in such appeal).

### **Admission and rejection of client money proofs**

3.—(1) The Administrators may admit a client money proof either for the whole amount claimed, or for part of that amount.

(2) If the Administrators reject a client money proof in whole or in part on or after the date of the Order, the Administrators shall prepare a written statement of reasons for doing so, and send it as soon as reasonably practicable to the Client Money Claimant.

(3) If the Administrators had rejected a client money proof in whole or in part and sent such a statement prior to the date of the Order, the Administrators shall send a notice to the Client Money Claimant confirming that statement.

### **Appeal against decision on proof**

4.—(1) If a Client Money Claimant is dissatisfied with the Administrators’ decision with respect to their client money proof, that Client Money Claimant may apply to the Court for the decision to be reversed or varied. Any such application must be made pursuant to Chapter 5 of Part 9 of The Investment Bank Special Administration (England and

Wales) Rules 2011, in the MFG UK special administration proceedings, using the form of application notice appended to this Client Money Distribution Procedure (“**Form 1**”).

(2) An application under sub-paragraph (1) must be filed with the Court within 21 days of the Client Money Claimant receiving the statement under Rule 3(2) or the notice under Rule 3(3), as applicable.

(3) A Client Money Claimant who files an application under sub-paragraph (1) above must forthwith give notice in writing to the Administrators of the filing of that application.

(4) Where application is made to the Court under this Rule, the Court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant to the Administrators.

(5) Neither MFGUK nor the Administrators shall be personally liable for costs incurred by a Client Money Claimant or any other person in respect of an application under this Rule unless the Court otherwise orders.

#### **Variation of proof**

5. –(1) A Client Money Claimant’s client money proof may at any time, by agreement with the Administrators, be varied as to the amount claimed.

#### **Notice of proposed distribution**

6.—(1) Where the Administrators propose to make a distribution to clients, the Administrators shall give notice of that fact.

(2) A notice pursuant to sub-paragraph (1) shall be given to all clients:

(a) who are shown in MFG UK’s records: (i) to have had balances on their accounts with MFG UK as at 31 October 2011, whether positive or negative; (ii) to have had an open account with MFG UK at any time on or after 1 January 2011, even if that account now has a nil balance or has been closed; and/or (iii) to have submitted a Claim Form to the Administrators; and

(b) in each case, whose email addresses, fax numbers or addresses are known to the Administrators;

save that the Administrators are at liberty to state, in the first or any subsequent notice, that all further notices shall be given by way of advertisement on the MFGUK pages of the KPMG website only ([www.kpmg.co.uk/mfglobaluk](http://www.kpmg.co.uk/mfglobaluk)). In that event, the subsequent notices need only be advertised on the website and need not be sent to clients.

(3) With respect to the first distribution after the date of the Order only (and not subsequent distributions), a notice pursuant to sub-paragraph (1) shall, in addition, be published in the gazette and advertised in the following publications:

- (a) Financial Times (all editions);
- (b) The Times; and
- (c) Wall Street Journal (USA edition and Europe & Asia edition).

(4) A notice pursuant to sub-paragraph (1) must—

- (a) state that it is the intention of the Administrators to make a distribution to clients within the period of 2 months from the last date for proving as defined in sub-paragraph (c) below;
- (b) specify whether the proposed distribution is interim or final;
- (c) specify a date (“**the last date for proving**”) up to which client money proofs may be lodged being a date which—
  - (i) is the same date for all clients; and
  - (ii) is not less than 21 days from that of the notice;
- (d) state that any Client Money Claimant who has not already submitted a client money proof and who does not submit a client money proof by the last date for proving will not be entitled to share in the proposed distribution.

#### **Admission or rejection of proofs**

7.—(1) Unless the Administrators have already dealt with them, within 14 days of the last date for proving, the Administrators shall—

- (a) admit or reject (in whole or in part) client money proofs that have been submitted; or
- (b) make such provision in respect of them as they think fit.

(2) The Administrators are not obliged to deal with client money proofs lodged after the last date for proving, but may do so if they think fit.

#### **Postponement or cancellation of distribution**

8.— If in the period of 2 months referred to in Rule 6(4)(a) the Administrators consider that by reason of the size of the provision required to be made in respect of any unresolved Client Money Claim or for any other reason that it is expedient to do so, the Administrators may cancel or postpone the proposed distribution.



## **Payment of distributions and related matters**

**9.—**(1) Where the Administrators have not, pursuant to Rule 8, cancelled or postponed the proposed distribution they shall, within the period of two months referred to in Rule 6(4)(a), proceed to make the proposed distribution.

(2) The Administrators shall make provision for the amount of any client money proof received by them by 5pm London time on the last date for proving and which they have rejected in whole or in part, where they have received notice of an application by the Client Money Claimant to appeal the rejection of their client money proof (in whole or in part) by the later of: (a) 5pm London time on the last date for proving; and (b) 30 days after the Administrators have sent a statement under Rule 3(2) or a notice under Rule 3(3) (as applicable);

(3) The Administrators are not obliged to make provision for client money entitlements in any circumstances other than those described at Rules 7(1)(b) and 9(2) above and Rule 11(1) below; but the Administrators may, in their absolute discretion, make provision in other circumstances.

(4) Payment of distributions may be made by electronic bank transfer or by any other means agreed between the Administrators and the Client Money Claimant.

## **Client money entitlement established, increased or reduced after payment of distribution**

**10.—**(1) If after payment of a distribution any Client Money Claimant subsequently establishes a client money entitlement, or an increased client money entitlement, in either case for which the Administrators did not make provision under Rule 9, the Client Money Claimant is not entitled to disturb the distribution; but is entitled to be paid, out of any client money for the time being available for the payment of any further distribution, any distribution which the Client Money Claimant has failed to receive.

(2) Any distribution payable under sub-paragraph (1) shall be paid before the client money there referred to is applied to the payment of any such further distribution.

(3) If, after a client's client money proof has been admitted, the amount of the client money proof is reduced, the Administrators have liberty to apply to the Court for an order that the client is liable to repay to the Administrators (for the benefit of the Client Money Trust) any amount overpaid by way of distribution together with interest.

## **Client money balances in the records of MFGUK for which no claim is submitted**

**11.—**(1) Where MFGUK has a record of a client money balance with respect to a client who has not submitted a client money proof, the Administrators shall make provision as if that client has a client money entitlement equal to that client money balance.

(2) The Administrators shall be entitled to apply for directions with respect to any provision made in accordance with sub-paragraph (1) above.

## Notices

**12.—** (1) Any notice or statement to be sent by the Administrators to a Client Money Claimant may be sent by email, fax and/or post and shall be deemed to have been received by the Client Money Claimant:

(a) if sent by first class post to an address within the UK, 2 business days after posting;

(b) if sent by airmail post to an address not within the UK, 5 business days after posting;

(c) if sent by fax or email before 5 pm London time on a business day, on that business day; and

(d) if sent by fax or email on a day that is not a business day or after 5 pm London time on a business day, on the next following business day.

(2) For the purposes of sending notices or statements to a Client Money Claimant, the Administrators shall use the primary email address, fax number and/or address recorded on the MFGUK customer information system.

(3) Any notices or legal proceedings to be sent to or served on MFGUK or the Administrators must be emailed to [mfglobalclaims@kpmg.co.uk](mailto:mfglobalclaims@kpmg.co.uk) with a hard copy delivered for the attention of the Administrators to: MF Global UK Limited (in special administration), 5 Churchill Place, Canary Wharf, London, E14 5HU, England.

# APPEAL AGAINST REJECTION OF CLIENT MONEY PROOF

Rule 4 of the  
Client Money  
Distribution  
Procedure

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

Form  
1

## *Application Notice*

**MF Global UK Limited (in special  
administration)**

Company number **01600658**

**IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
COMPANIES COURT**

*For court use only*  
Court case number: **9527 of 2011**

Appeal against the rejection of a client money proof pursuant to  
Rule 4 of the Client Money Distribution Procedure prescribed by  
the Order of David Richards J dated 11 June 2013.

**Between  
Applicant**

**and  
Respondents**

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**(1) MF GLOBAL (UK) LIMITED**

(as trustee of the Client Money Trust)

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**(2) RICHARD HEIS**

**(3) MICHAEL ROBERT PINK**

**(4) RICHARD DIXON FLEMING**

(as Administrators of MF Global (UK) Limited (in  
special administration))

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This application is made pursuant to the Investment Bank Special Administration (England and Wales) Rules 2011, in accordance with Rule 4 of the Client Money Distribution Procedure prescribed by the Order of David Richards J dated 11 June 2013.

The application shall be governed by the Client Money Distribution Procedure and the Court shall give directions for the determination of this application in accordance with that procedure and, as appropriate, Chapter 5 of Part 9 of The Investment Bank Special Administration (England and Wales) Rules 2011.

(a) Insert name of applicant appealing the rejection of the client money proof

The Applicant (a)

(b) Insert address of the applicant and / or solicitor for the applicant

whose address is (b)

For Office use intends to apply to Mr Justice David Richards on:-

Date

Time

hours

Place

(c) State clearly what order you are seeking.

For an order that (c)

(d) Briefly set out why you are seeking the order and what evidence you rely on in support of this application

For the following reasons (d)

The Applicant appends to this application a copy of: (1) its client money proof; and (2) the notice of rejection of that proof.

Date

Signed:

(SOLICITOR FOR THE) APPLICANT

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No 9527 of 2011

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

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

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

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**ORDER**

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