

November 28, 2011

Gary Gensler  
Chairman  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

Dear Chairman Gensler:

As you know, on October 31, 2011, MF Global filed for bankruptcy—one of the largest bankruptcies in our country's history. The collapse reportedly was due to MF Global's inability to meet margin calls on its \$6.3 billion portfolio of "repo-to-maturity" contracts involving bonds issued by European governments. Notably, this collapse has led to thousands of frozen customer accounts—some of these customers are small business owners now unable to hedge their positions against price fluctuations. Moreover, the MF Global Bankruptcy Trustee reports that as much as \$1.2 billion in customer funds is missing.<sup>1</sup>

I am writing to examine the effectiveness of coordination among MF Global's governmental regulators and the self regulatory organizations (SROs) of which it is a member. I seek to examine the Commodity Futures Trading Commission's (CFTC's) role and your personal involvement in the supervision of MF Global. Finally, I would like to better understand your reasons for recusal from CFTC's investigation into MF Global's failure and its missing customer funds.

I am concerned about the effectiveness, individually and collectively, of the regulators and SROs that regulate MF Global's core business (Securities and Exchange Commission (SEC), National Futures Association (NFA), Financial Industry Regulatory Authority (FINRA), Chicago Board Options Exchange (CBOE), Chicago Mercantile Exchange (CME)) and those responsible for MF Global's designation as a primary dealer (the Federal Reserve Bank of New York). The most recent 10-K securities filing by MF Global indicates problems with internal controls, including an unauthorized trading incident in 2008, and recent cuts in headcount, including cuts of compliance staff.<sup>2</sup> A recent New York Times article indicated that you had concerns about the quality of MF Global's books before its collapse<sup>3</sup>, and other reports indicate that regulators and the Bankruptcy Trustee will face significant problems locating missing client funds because of the poor quality of MF

---

<sup>1</sup> Nov. 21, 2011, Press Release available at <http://dm.epiq11.com/MFG/Project/default.aspx>

<sup>2</sup> See <http://www.sec.gov/Archives/edgar/data/1401106/000119312511145663/d10k.htm>

<sup>3</sup> Its Leader on Sidelines, Regulator Faces Biggest Test in MF Global, available at <http://dealbook.nytimes.com/2011/11/07/its-leader-on-sidelines-regulator-faces-biggest-test-in-mf-global/>

Global's records.<sup>4</sup> It has been reported that FINRA required MF Global to increase its net capital pursuant to SEC Rule 15c3-1 specifically because of MF Global's repo-to-maturity transactions.<sup>5</sup>

In sum, different information was known by multiple regulators and SROs that might have, if aggregated and shared, been used to identify the risk at MF Global earlier or might have mitigated the consequences of its collapse. To help the Subcommittee understand the coordination among and between regulators and SROs, please respond to the following:

1. Please provide all communications and documents (defined in Exhibit A) related to the coordination of CFTC's oversight of MF Global with SEC, FINRA, CME, CBOE, NFA, or the Federal Reserve Bank of New York. For purposes of this question only, please limit communications to those that took place between January 1, 2010 and October 31, 2011, and limit documents to those that were created between January 1, 2010 and October 31, 2011.
2. In June 2011, officials at FINRA and the SEC began discussing whether MF Global should set aside more capital for a growing number of "repo-to-maturity" trades tied to European sovereign debt. Officials at the SEC were also reportedly concerned that MF Global may have been engaging in "window dressing" – a practice designed to disguise its debt levels to investors by temporarily reducing the debt it was carrying before publicly reporting its finances each quarter.<sup>6</sup> Did officials at the SEC raise either of these specific concerns with you or any other CFTC officials?
3. Please provide all communications and documents transmitted between persons at the CFTC and the SEC or FINRA that relate to (1) whether MF Global's capital reserves were adequate in light of the risk posed by its "repo-to-maturity" trades or (2) whether MF Global may have attempted to disguise its debt level or make that level less apparent.
4. Were any questions or issues related to MF Global raised formally or informally at the Financial Stability Oversight Council meetings on May 24, July 13, July 18, August 8, or September 15, 2011? If yes, please describe the issues in detail.

The apparent loss of segregated client funds at MF Global is extremely troubling. As CFTC is MF Global's futures commission merchant (FCM) business regulator, charged with ensuring its segregation of client funds, CFTC should have significant insight into the internal operations of MF

---

<sup>4</sup> MF Global Trustee Says Shortfall Could Exceed \$1.2 Billion, available at <http://dealbook.nytimes.com/2011/11/21/mf-global-trustee-estimates-shortfall-could-be-more-than-1-2-billion/>

<sup>5</sup> MF Global – Slayed by the Grim Repo?, available at <http://currents.westlawbusiness.com/Article.aspx?id=3a6afdcc-59b3-46f4-9fb1-c126ab1f0f2a&src=RSS>

<sup>6</sup> MF Global Masked Debt Risks, available at <http://online.wsj.com/article/SB10001424052970204621904577015950376439984.html?KEYWORDS=mf+global>

Global. And, as you stated on November 3, 2011, “segregation of customer funds is the core foundation of customer protection in the commodity futures and swaps markets.”<sup>7</sup> News reports have detailed your involvement in CFTC’s work on MF Global, especially in the days and weeks leading up to MF Global’s collapse.<sup>8</sup> One article reported that you personally received a call at 2:30 a.m. on Monday, October 31, 2011, where you were told that customer funds at MF Global were missing.<sup>9</sup> A recent New York Times article provides the following description of your actions in the lead-up to MF Global’s collapse:

A few days before MF Global’s collapse, regulators stationed at the firm were assured its books were in order. Their boss, Gary Gensler, was not convinced. A former Goldman Sachs partner who once passed the test for certified public accountants, he bore into the numbers himself and grew uneasy with the firm’s finances. “Keep pressing them,” he told his regulators, according to people with direct knowledge of the conversation. Within days, his suspicions were confirmed. More than \$600 million in customer money was missing from MF Global, prompting an investigation by Mr. Gensler’s Commodity Futures Trading Commission.<sup>10</sup>

In order to help this Subcommittee understand CFTC’s oversight of the operations of MF Global, please answer the following:

5. In the period leading up to the bankruptcy of MF Global, did you come to believe that MF Global’s books were not in order? If so, exactly how and when did you come to this belief, and what specific information caused you to reach this conclusion? If not, please take this opportunity to correct the record as reported by the New York Times.
6. Please provide all communications or records of communications between officials at the CFTC and representatives and employees of MF Global from March 1, 2010, through October 31, 2011.

---

<sup>7</sup> Nov. 3, 2011, Testimony available at

<http://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-95>

<sup>8</sup> Its Leader on Sidelines, Regulator Faces Biggest Test in MF Global, available at <http://dealbook.nytimes.com/2011/11/07/its-leader-on-sidelines-regulator-faces-biggest-test-in-mf-global/>; Many Alarms Rang Before MF Global Crashed, available at <http://dealbook.nytimes.com/2011/11/02/many-alarms-rang-before-mf-global-crashed-in-ruins/>

<sup>9</sup> Many Alarms Rang Before MF Global Crashed, available at <http://dealbook.nytimes.com/2011/11/02/many-alarms-rang-before-mf-global-crashed-in-ruins/>

<sup>10</sup> Its Leader on Sidelines, Regulator Faces Biggest Test in MF Global, available at <http://dealbook.nytimes.com/2011/11/07/its-leader-on-sidelines-regulator-faces-biggest-test-in-mf-global/>

7. Please provide all documents and communications, or documents related to communications, that were generated by, or transmitted between, one or more CFTC officials, and which concern MF Global.
8. When did CFTC become aware of MF Global's large European sovereign debt positions, and when did CFTC become concerned that these positions could materially and negatively impact the firm's financial health?
9. Were you or anyone else at CFTC ever concerned that MF Global's financial difficulties or possible liquidity problems could directly impact MF Global's FCM customers? If yes, please describe these concerns, and please provide all records related to these concerns.
10. It has been reported that Jon Corzine, the former CEO of MF Global and your former colleague at Goldman Sachs, personally lobbied you and your staff in opposition to CFTC Rule 1.25.<sup>11</sup> In any of your conference calls and meetings with Mr. Corzine during his tenure at MF Global, did the issue of MF Global's European trading positions, capital, or liquidity come up? If yes, please provide all records memorializing these discussions.

It is reported that you became heavily involved in CFTC's oversight of MF Global, particularly in the days leading to its bankruptcy.<sup>12</sup> Shortly after its bankruptcy, you recused yourself from CFTC's investigation into MF Global. Discussing your decision on November 5, 2011 to recuse yourself from further involvement in the MF Global matter, CFTC Commissioner Bart Chilton said that you had chosen to "err on the side of caution and avoid even the potential appearance of a conflict."<sup>13</sup> In order to help this Subcommittee understand your recusal, please answer the following:

11. Why did you feel it necessary to recuse yourself from the MF Global investigation to avoid even the appearance of a conflict of interest, but not find it necessary to recuse yourself when Mr. Corzine personally lobbied you on a proposed rule material to MF Global's business?
12. Did you discuss the possibility of recusal with the general counsel or designated ethics official of the CFTC prior to your meetings with Mr. Corzine regarding Rule 1.25? If not, why not?
13. Did you discuss your recusal from the MF Global investigation with the general counsel or designated ethics official of the CFTC? If not, why not?

---

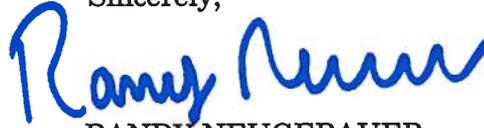
<sup>11</sup> MF Global and CFTC Discussed Proposal on Investments, available at <http://online.wsj.com/article/SB10001424052970204621904577016341234026240.html?KEYWORDS=mf+global>

<sup>12</sup> See Notes 6-9 supra.

<sup>13</sup> Top U.S. regulator withdraws from oversight of MF Global, available at [http://www.washingtonpost.com/business/economy/top-us-regulator-withdraws-from-oversight-of-mf-global/2011/11/05/gIQAPH6jpM\\_story.html](http://www.washingtonpost.com/business/economy/top-us-regulator-withdraws-from-oversight-of-mf-global/2011/11/05/gIQAPH6jpM_story.html)

Please provide the requested information in the manner described in Attachment B no later than 5:00 p.m. EDT on December 7, 2011.

Sincerely,



RANDY NEUGEBAUER

Chairman

Subcommittee on Oversight and Investigations

cc:

The Honorable Spencer Bachus  
The Honorable Barney Frank  
The Honorable Michael Capuano  
The Honorable Scott Garrett  
The Honorable Maxine Waters  
The Honorable Frank Lucas

**ATTACHMENT A**

1. The terms "document" or "record" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The terms "communication" or "correspondence" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

4. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

The term "referring," "relating," "relate," or "regarding" as to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

**ATTACHMENT B**

1. The Committee requests that you send documents in electronic form (e.g. CD, memory stick, or thumb drive).
2. Documents produced in electronic format should also be organized, identified, and indexed electronically.
3. Electronic document productions should be prepared according to the following standard:
  - (a) All documents shall be in searchable .PDF format.
4. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
5. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
6. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
7. If compliance with the request cannot be made in full, compliance shall be made the extent possible and shall include an explanation of why full compliance is not possible.
8. In the event that a document is withheld on the basis of privilege, provide a privilege log (e.g. a Vaughn Index) containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
9. This request is continuing in nature and consists of an on-going obligation. This request applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
10. All documents shall be Bates-stamped sequentially and produced sequentially.