

Tuesday 24th January 2012

Communication is Key

Dear Traders,

First up a correction

In my last update I incorrectly stated that Sonray collapsed in 2008 when in fact they collapsed in June 2010. In addition it was brought to my attention that originally the Administrators thought account holders would only receive \$0.25 cents to \$0.35 cents in the dollar where the latest news is suggesting \$0.67 in the dollar. In this case where there was proven fraud it appears "waiting" has been a benefit to clients. It is nonetheless worth noting that it will have taken nearly two years for clients to get some of their money back – if it hopefully happens as planned in the next couple of months. But why so long? It wasn't just because of the fraud investigation. That apparently was an easy process. No. The delay has been caused by a dispute amongst clients and the resulting lengthy (and costly) court action. This is the big risk I see ahead of us with MFGA.

However in our case there was no fraud, MFGA was a profitable clean skin and reputable business with a net surplus of around \$11m. It also appears that clients in every jurisdiction, apart from us in Australia, have managed to receive (or are about to receive) a partial distribution of their client property (where clients in Canada have received 100% of their account balances).

Credit to Deloitte

Before I get into the meat of this update I just want to applaud Chris Campbell and Deloitte for the electronic online proving process they have developed. As he said it's probably the only electronic online claims tool being used by any of the MF Global administrators around the world. So hats off to Deloitte as it will sure beat having to mail in paper based claim forms. :o)

My Objectives

As I mentioned in my last update it's my preference to use my position on the Committee of Creditors (COC), my contacts and my connection with you to help facilitate a smooth administration for Deloitte with the goal of achieving both an early distribution and a timely final distribution to end our involvement with the administration of MFGA.

The best way for me to do this is to assist with communication wherever I can, given the restrictions placed on me by the Confidentiality Agreement I have signed.

Let's see how I go without getting myself into trouble.

Key Risk – Being Divided

As you know I believe our greatest risk in this MFGA saga is not the final settlement price calculation (valuation) or how any collection short falls are dealt with (pooling) or whether or not Deloitte will receive all the settlement collections (recovery).

No. Our biggest risk is disagreement amongst ourselves that will result in litigious court action. Costly court action that will see Deloitte and their lawyers continuing to administer MFGA for as long as they can. They are not even concerned about their fees not being paid as they will, via a simple court order, access our segregated accounts to pay their fees. The more disagreement between clients the better it is for Deloitte and their advisers. That, in my opinion, is our biggest risk.

Key Defense – Being Informed

Over the last week I have received numerous emails from clients indicating their intentions to have a go at Deloitte.

Their anger is rightly justified.

Deloitte's lack of communication combined with their slow progress (at least perceived, in particular compared to other countries) and their excessive fees has created suspicion, heighten anxiety levels and enflamed outrage and pushed many people to the point of direct court action.

Deloitte have created a pressure cooker environment.

This could have easily been avoided.

As I sat through the last meeting of the COC on the 22 December 2011 I kept thinking why couldn't all the creditors be allowed to hear this via a web cast? I didn't think much was of it was commercially sensitive. Although everyone will have their own personal opinion on Deloitte's level of fees, their level of analysis, their level of servicing and their level of urgency and timing to make a court application, there is no doubt they are working on MFGA and there is a course they have mapped out and that they are following it. Take for example their online proving process. What a wonderful development and why not share the positive news?

It and other news is information that every client should know, not just the COC.

If everyone knew what was going on then I think many people would be more relaxed. I'm not saying they would be happy, but they would be more knowledgeable. And as we know as adults information is the key to understanding and the making of good decisions.

And I believe Deloitte could be much better communicators.

Good communication informs people. Informed people are knowledgeable people. Knowledgeable people are generally calm people. Many MFGA clients are understandably not calm.

I believe Deloitte's communication is poor for the fees they are charging.

And I think it's a deliberate ploy on their behalf to create pressure for the purpose of eliciting individual client court action against them to prolong the administration and continue their fee generating activities.

But that is only my personal opinion.

Deloitte Will Be Govern By The Law (and their profit)

We all have to understand that Deloitte is a business.

Deloitte have no obligations to uphold the market integrity of client segregated accounts.

Deloitte have no obligation to expedite the process to help return confidence to the market.

Deloitte have no obligation to step outside the insolvency laws to facilitate a quick partial distribution.

In fact Deloitte have no obligation to give us clients the best possible deal. They are only obliged to carry out the Administration according to Australia's Corporations Law.

It's up to ASIC to uphold its own Market Integrity Rules that were released in August 2010 (and specifically rule 2.2.6 (d) (ii) which deals with the withdrawal of client funds from client segregated accounts). ASIC's absence in upholding its own rules is a national embarrassment and Greg Medcraft as the chairman of ASIC should hang his head in shame.

Deloitte only have an obligation to administer MFGA according to the Corporations Law.

In addition Deloitte is a business. A business that exists to make money.

So Deloitte has to walk a fine line between their obligation to administer MFGA according to the law and their motivation to maximise their fees.

We know the best way to maximise their fees is to prolong the administration. We also know the best way to prolong an administration is to see multiple legal actions launched in the courts. We also know the best way to agitate people towards individual court action is to create an environment of suspicion. We know the best way to create suspicion is to keep people in the dark through a lack of communication.

I personally believe Deloitte have deliberately kept clients uninformed for a long period of time (6 weeks) for the sole reason of pushing some towards legal action.

So we all need to understand this awful game we have found ourselves caught up in.

We need to understand that Deloitte are working according to the law and that the Court will make the final decision on how client property is distributed. And this is very important to understand. Deloitte can influence the decision by presenting evidence to the court. However it is the court that will make the decision on how client property (our funds in the pooled segregated accounts) will be distributed, not Deloitte.

We need to understand that it's in Deloitte's interest to create a pressure cooker environment where clients decide to take action in their own hands.

We need to understand that it's in Deloitte's interest if conflict and division appears amongst clients due to the final valuation and pooling approach they adopt. Where "valuation" refers to the final settlement price calculation and "pooling" refers to how they deal with any shortfall in settlement collections.

So I think Deloitte will choose a "valuation" and "pooling" option that will be purposely divisive. Options that will create conflict and encourage court action. And when they do I imagine we'll hear a lot about the "complexities" involved. I hope I'm wrong but let's wait and see.

However my point here is this.

We must try to resist the urge to take the bait and bite at their antagonism. And we can better handle this aggravation we feel by better understanding this adult game that is being played out. And make no mistake. Deloitte are the masters of their craft, they are top of the tree and they "play to win" (a direct quote from Deloitte's "Seven Signals"). Well if we wish to remain competitive in this game then we'll have to play smart. And by playing smart I mean by using good communication.

Key Weapon – Communication

As you no doubt know Deloitte are God, King, Judge and Jury in this land of administration we find ourselves in. They are all powerful.

We as clients have little say.

The COC is impotent.

The COC is purely a consultative body and with the restrictive Confidentiality Agreement we all had to sign we cannot even communicate back what we have learnt on your behalf. Can you see a pattern here? Can you see how Deloitte tightly manages what is "communicated"?

And yet the COC is supposed to be a representative body of all creditors/clients. So how can that be when we're (the COC) are restricted and prevented from communicating with all creditors/clients?

Although we on the COC have the authority to approve their fees we also know they can easily receive a court order to have their fees approved if we refuse them. The COC has no real purpose. It's purely a window dressing device.

Our only power is to group together.

As individuals we are nothing.

As a group we can become something.

And that is why I have helped to initiate both an association and web site.

We need to go beyond my list and reach more MFGA clients.

We need to connect with as many MFGA clients as possible.

If we can connect with more people then we can start to help communicate what the big risks are.

If we can start to communicate on a broader level then I believe we'll be able to help facilitate a smoother administration and a smoother court process. And a smoother administration and court

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From the desk of **Brent Penfold** *My MF Global Update*

Futures Adviser AFSL 225946

Futures Trader, Author and Educator

process will mean a speedier return of our client property and the less likely hood our segregated accounts will be accessed to pay fees.

A New Association: MF Global Australia Clients Support Group

As you know there has been a core group of selfless people putting in the hard yards to help improve our position. The accumulation of that work has been the creation of an association and its web site.

The association is called MF Global Australia Clients Support Group (MFGA-CSG) and its web site is located at www.mfgaclients.com.au.

In addition, the association has created a Facebook group, where clients can become members. Facebook will be used to share updates regarding MFGA and the progress made with the administration process. The objective is to offer all clients one place to go to stay tuned to the latest news.

You can find the Facebook group by searching for 'MF Global Australia Clients Support Group' or go directly to <http://www.facebook.com/groups/mfgacsg/>

The association has two major goals.

Firstly to help clients achieve a faster return of funds and secondly to assist clients where possible, particularly those most affected financially and emotionally by this ordeal.

The key weapon to achieve these objectives is simply good communication.

Better communication than I believe I can achieve through these updates.

It's my plan that these updates will shortly stop and MFGA-CSG will take over (and naturally I'll help and use my list where possible, given the constraints imposed on me by the Confidentially Agreement, if MFGA-CSG asks me to).

The key people in the association to date are as follows;

Ross Anderson:

You may remember Ross from when I was visiting alternative administrators and he kindly provided a lawyer when Pierre-Francis Grillet and I met with Chris Campbell back in November. Ross is an active trader, a chartered accountant, holds an AFSL and is an ex-liquidator who remembers Chris Campbell from his (Ross's) early days with Arthur Andersen. Ross is well connected, has anticipated every step in this reality drama we find ourselves in and most importantly, he is both smart, a deep thinker and is very measured in expressing his opinions (unlike me). It was Ross's idea that we needed to form an association.

Ross will lead the association.

John Hancock:

John is an active trader and an ex-partner of Deloitte. John knows some of the Administrators personally and will help the association maintain a cordial and good relationship with Deloitte. John will help to ensure the association remains professional in its conduct.

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Warren Lum (along with his business partner Steve Brit):

Warren is an active trader and leads a trading advisory business called Option One. Most of Option One's clients were tied to MF Global. Warren offers industry and market knowledge and more importantly connections within our industry.

Raymond Orr:

Raymond is an active trader and is a policy guy who has extensive experience in consulting with and liaising with government departments in achieving positive change. Raymond has liaised extensively with ASIC.

Chris Richmond:

Chris is an active trader now living in the US who has developed the association's website. He has been a busy bee and has worked tirelessly to get the web site operational with a safe database behind it.

Garth Schwer:

Garth is an active trader with an IT background. Garth is very familiar with social media and will assist in monitoring and helping along the association's Facebook page. Garth also has experience with organized groups and public events.

Pierre-Francis Grillet:

Well I all hope you know who Pierre-Francis is, or P-F as we all call him. If Ross is the head of the association then P-F is the turbo charged, 16 cylinder engine room that has propelled this minor juggernaut along. As you know P-F was the one who got me through that stressful day in November and has been very much instrumental in getting the association and its web site to this point. He has been a brilliant co-coordinator.

Ross and P-F are the bookends of the association.

These are the current people most involved. As it moves along no doubt others will chip in.

Please Visit the Web Site, become a member of the Association by providing your details and join us on Facebook.

If you are an MFGA client then please visit the web site and join the Association – it's free. You can also join MFGA-CSG on Facebook for the latest news about MF Global, both in Australia and overseas.

MFGA-CSG will take the upmost care of all personal information provided, in accordance with the Fair Trading laws of NSW, which govern what the association can and cannot do.

Now you may be asking yourself why MFGA-CSG would need your personal information? The answer is simple. Firstly, it's required to allow MFGA-CSG to communicate directly with as many clients as possible via email. And secondly it will be important, if the need arises, to demonstrate to various bodies (Deloitte, ASIC, the Federal Government, the Court, the media etc) that MFGA-CSG is a representative body that is working in the interests of thousands of MFGA clients. It's the associations intention to connect as many MFGA clients as possible to demonstrate that it is "representative" and therefore its voice, concerns and or recommendation should be heard and taken into account. And just as importantly the association is also more likely to attract attention of the media if it does represents thousands of clients.

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After you join up please let as many other MFGA clients know and encourage them to sign up as well. It's only by strength of numbers that the association will become an effective communication tool.

A tool to let all MFGA clients know of the real risks ahead.

A tool to assist a smooth administration and court process.

If the association can galvanize enough MFGA clients then it will be able to make direct contact with Bill Shorten, the Minister for Financial Services and Superannuation and Greg Medcraft, the chairman of ASIC and potentially if needed have our voices heard by the Court.

As individuals we're only annoying flies.

But as an association, through good communication, we'll have a chance of standing united and you never know we may even become the elephant in the room that even Deloitte will not be able to ignore!

Please visit the web site and sign up with the Association, and join us on Facebook.

Yours sincerely,

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