

# Questions for Deloitte

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## Notes:

- In this document, **MF-AU** is used as an abbreviation for “MF Global Australian companies: MFGA, MFGS and BrokerOne”.
- Unless stated otherwise, all references are to the Australian operations of MFG, Australian clients, and Australian segregated accounts.

## 1. Segregated Accounts

- 1.1. Q: Do the ‘segregated accounts’ remain segregated once MF-AU are in Administration?
- 1.2. Q: Does Deloitte have access to the funds in the segregated accounts?
- 1.3. Q: Can Deloitte use the money in the segregated accounts to pay for their fees?
- 1.4. Q: Has Deloitte liaised/consulted with and sought permission/approval from ASIC, SFE, the Federal Treasury and/or the RBA for their planned treatment of segregated accounts, and in so doing, which part of Corporation Law are they following and relying upon? If Deloitte has not informed ASIC, SFE, the Federal Treasury and/or the RBA of their planned treatment of segregated accounts, do they intend to do so as a matter of courtesy, and if so, when?
- 1.5. Q: Money deposited by clients in the segregated accounts is comparable to money deposited in a bank account. Is this money protected? (cf. Government guarantee)
- 1.6. Q: If the integrity of the segregated account(s) has been compromised, then can MF-AU’s professional indemnity insurance be used to make up for the shortfall?
- 1.7. Q: Is any money “missing” from the segregated accounts?
- 1.8. Q: Can Deloitte detail the different types of client segregated funds (eg: Futures vs CFD), whether they are all ring-fenced to the same degree, whether they all share the same liabilities, and what the process is for each of them in relation to funds being returned to clients?
- 1.9. Q: In the event that a shortfall is found in any of the client segregated fund accounts, what would happen? If the shortfall can be traced to a specific client account, will that client be asked to make up the shortfall?
- 1.10. Q: On a broader level, if a shortfall is found in one type of client segregated fund (eg Futures) could that impact another type of client segregated fund (eg CFD's)?
- 1.11. Q: What is the balance of the clients’ segregated accounts?
- 1.12. Q: Where is the money from the segregated accounts currently sitting?

- 1.13. Q: Is there any evidence of any use of the money from the segregated accounts by MF-AU for operations other than allowed under Australian regulation?
- 1.14. Q: If all money from the segregated accounts has been accounted for, why can't Deloitte return that money immediately to the clients? As all potential authorised use of the segregated accounts (for instance, hedging for the CFD segregated account) has now stopped, what justification can there be to not return the money immediately to all clients?
- 1.15. Q: Why can't Deloitte allow the transfer of accounts (with or without opened positions) to another broker?
- 1.16. Q: Are funds held in foreign currencies (eg: USD, GBP) within the client segregated accounts treated any differently to funds held within the accounts as AUD funds? When funds are repaid, how will the foreign currency amounts be treated?
- 1.17. Q: For those clients who have no open orders and closed out all open positions shortly before MF Global went into Chapter 11, can Deloitte confirm that the cash balances shown on the statements currently being issued are correct?

## 2. Open positions

- 2.1. Q: What actions has Deloitte undertaken to date to execute clients' instructions to liquidate positions?
- 2.2. Q: Why hasn't Deloitte secured an alternative clearer?
- 2.3. Q: Why can't open futures and options positions at the CME be liquidated, as per instructions given to Deloitte, considering that CME has received court approval to close or transfer positions?
- 2.4. Q: What is the process to close positions, now that the companies comprising MFG are in Administration?
- 2.5. Q: What will happen if open positions for which instructions to liquidate have been given by clients, but which have not been executed by Deloitte / MF-AU, reach their delivery date? What will Deloitte do if it receives physical delivery of the corresponding commodities?
- 2.6. Q: What will happen if open positions for which instructions to liquidate have been given by clients have not been executed by Deloitte / MF-AU? Losses are potentially unlimited if such positions are not closed out. Who takes responsibility?

## 3. Clients vs. Creditors

- 3.1. Q: ASIC's definition of a Creditor is as follows:  
*"You are a creditor of a company if the company owes you money. Usually, a creditor is owed money because they have provided goods or services, or made loans to the company."*  
How can clients be considered as creditors under such a definition? MF-AU clients never

made loans to MF-AU!

- 3.2. Q: In the US, the client of a bankrupt or collapsed Futures Commission Merchant gets preferential treatment to creditors. In the UK, the client has to stand in line with other creditors.
- a) What is the law in Australia?
  - b) Given MF Global was a US holding company, does US law pertaining to client accounts hold globally?
- 3.3. Q: What rights will clients lose by being considered creditors rather than remaining clients?
- 3.4. Q: In view of some precedent rulings against considering clients of a segregated fund as creditors (see Lehman's Brothers case extract and link below), how can Deloitte justify its view that clients should be considered creditors?
- "In the Lehman's case it was determined that claims against its clients cannot be set-off against clients' entitlement to share in the Client Money Pool, nor used as the basis for a retainer by the firm. This is without prejudice to any security which the firm may have over those entitlements.*
- The judge's analysis was based on the fact that insolvency set-off under the Insolvency Rules 1986 is only available where there is a debtor-creditor relationship between both parties. This was not the case in relation to a firm and a client with an entitlement to share in the Client Money Pool, the relationship being one of trustee and beneficiary (as a result of the statutory trust), under which the client had a proprietary claim for the return of its client money."*
- SOURCE: Point 8 on page 4: of <http://www.herbertsmith.com/NR/rdonlyres/96D3C3B8-4EA2-44AC-9939-3A04AF1F3D29/0/Lehmanbriefing.pdf>
- 3.5. Q: What are the consequences of clients being now considered creditors? Beyond money paid to MF Global Australian companies (merely commissions to execute orders), will clients be considered secured or unsecured creditors with regards to money they deposited in the segregated account?
- 3.6. Q: Where do clients stand in the list of creditors?
- 3.7. Q: Who are Deloitte working for? Which interests (in order of priority) do they defend?
- 3.8. Q: What is Deloitte's position regarding clients who do not lodge an Informal Proof of Debt form? Will they be treated any differently from those clients who do lodge a completed Informal Proof of Debt form?

#### **4. Status of MF Global Australian companies**

- 4.1. Q: What were the MF-AU cash balances at time of administration (as distinct from client segregated accounts) to meet working capital (and, we can assume, administrator's fees)?
- 4.2. Q: What part of MF-AU assets are liquid and what part is not liquid? For the liquid part, how much has been recovered so far?

- 4.3. Q: Does any part of MF-AU's own assets sit overseas with other international MF Global entities? If yes, how much? Is it at risk because of the administration process in the respective countries?
- 4.4. Q: Do MF-AU have enough funds/liquidity (apart from in the segregated accounts) to cover Deloitte's fees?
- 4.5. Q: What are the estimates of the debtors and creditors on the balance sheet at the date of the coming Friday creditor's meeting – excluding Deloitte's fees and excluding the segregated accounts?
- 4.6. Q: If MF-AU's own assets held are not completely liquid, how much cash has been recovered so far? What is the shortfall? Where there is a shortfall in "cash" where exactly is this currently thought to be held?

## **5. MF Global Australian companies versus MF Global international entities**

- 5.1. Q: Are MF Global Australian companies (MFGA, MFGS, BrokerOne) isolated from MF Global international companies?
- 5.2. Q: If funds are missing in segregated accounts outside Australia, would this put at risk money in the segregated accounts of Australian clients?
- 5.3. Q: if MF-AU were profitable, why were they put into Administration?
- 5.4. Q: Why would potential malpractice (use of segregated account money for own operations / speculation) from MF Global entities outside Australia put the Australian segregated account funds at risk?
- 5.5. Q: What actions and mechanisms has Deloitte put in place to secure the safe repatriation of money belonging to MF-AU's clients that is currently sitting overseas (essentially in margin and in open positions with exchanges overseas)?

## **6. Timing of the administration**

- 6.1. Q: When will the money be transferred back to clients? Is it likely to be in a week? In a month? In a year?
- 6.2. Q: When will the remaining open positions be closed as per clients' instructions? Is that likely to be in 24 hours? In a day? By the end of this week? Next week? End of the month? End of the year?
- 6.3. Q: Does Deloitte realise that for many MF-AU clients who are full-time traders or investors, freezing access to their money is equivalent to rendering them unemployed, as they need and use these funds for a living? Similarly, does Deloitte realise that many small businesses are facing collapse as a direct result of all funds being held?

## **7. Transactions pending prior to MF-AU being declared to be in Administration**

- 7.1. Q: What happens with regard to the pending instructions (orders, cash withdrawal, account & positions transfer to another broker, etc, sent to MF-AU before they were declared to be in administration (ie: before 01/11/2011)?

## **8. Deloitte's fee estimate**

- 8.1. Q: Why is Deloitte's fee estimate for the first month 2.5 times more than Sonray's Administrator fee for the whole administration?
- 8.2. Q: Considering the simple nature of the broker's business model (merely electronic funds transfer) and the fact that the segregated account(s) as well as each client's account is electronically reconciled and reported daily, why does Deloitte estimate it will take so long to assess the situation and start distributing the money back to MF-AU clients?
- 8.3. Q: Deloitte claims in a press interview that their fee is justified relative to Sonray's because MF-AU is larger and more complex. Assuming no evidence has been uncovered of fraud or misappropriation of client funds in Australia and no forensic investigation will be required (as was the case with Sonray) then how is this claim of exponentially greater complexity justified?
- 8.4. Q: What is the breakdown of Deloitte's effort estimates by activity?
- 8.5. Q: What is the breakdown of Deloitte's effort estimates by title?
- 8.6. Q: How does Deloitte guarantee that each activity undertaken represents "Value for Money" for clients?
- 8.7. Q: Besides insolvency matters, how much experience has Deloitte of MF Global's industry?
- 8.8. Q: Specifically, what experience of derivatives trading does each staff member of Deloitte allocated to the Administration of MF Global companies have?

## **9. Oversight of Deloitte's actions as Administrator**

- 9.1. Q: Which regulatory body is responsible for overseeing Deloitte's action as Administrator?
- 9.2. Q: Should we have a committee representing account holders to oversee Deloitte's actions (separate from the Creditors' Committee)?

## **10. Deloitte's Communication**

- 10.1. Q: Why did Deloitte wait until Monday 07/11/2011, 4:30pm to inform clients that they would be considered creditors (more than 4 days after announcing the first meeting of creditors and less than 4 days before that meeting)?

- 10.2. Q: Why has Deloitte failed to inform its clients about their obligations?
- 10.3. Q: Why does Deloitte never mention the term “segregated account” in its communications to clients?
- 10.4. Q: Why hasn’t Deloitte kept the clients informed about the potential sale of MF Global companies in Asia and Australia? When does Deloitte plan to inform Australian clients about the potential impact to them of MFG’s administration?
- 10.5. Q: Why has Deloitte removed the PDS (Product Disclosure Statement) from MF Global’s web site? The PDS were available as late as Tuesday, 01/11/2011. Can Deloitte restore the links to these PDS?