

Form 2

(rules 2.2 and 15A.3)

IN THE SUPREME COURT OF NEW SOUTH WALES
DIVISION: EQUITY
REGISTRY: SYDNEY
CORPORATIONS LIST

No of 2011

IN THE MATTER OF

MF GLOBAL AUSTRALIA LIMITED (ADMINISTRATORS APPOINTED)

ACN: 001 662 077

**CHRISTOPHER ROBERT CAMPBELL, VAUGHAN NEIL STRAWBRIDGE AND DAVID JOHN FRANK
LOMBE IN THEIR CAPACITY AS ADMINISTRATORS OF MF GLOBAL AUSTRALIA LIMITED
(ADMINISTRATORS APPOINTED) ACN 001 662 077**

First Plaintiffs

MF GLOBAL AUSTRALIA LIMITED (ADMINISTRATORS APPOINTED) ACN 001 662 077

Second Plaintiff

AMENDED ORIGINATING PROCESS

A. DETAILS OF APPLICATION

This application is made under section 447D of the *Corporations Act 2001* (Cth) and section 63 of the *Trustee Act 1925* (NSW).

This application is for directions to be given to the first plaintiffs (**Administrators**) in their capacity as administrators of MF Global Australia Limited (administrators appointed), and for directions to be given to the second plaintiff (**MFGA**), and further or alternatively, declarations and other relief.

On the facts stated in the supporting affidavit, the plaintiffs apply for the following relief:

Pooling Questions

1. A direction as to the manner in which funds in the Client Segregated Accounts should be distributed having regard to Regulation 7.8.03(6) of the Corporations Regulations (the **Regulation**).

Filed on behalf of: The plaintiffs
Prepared by:
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Attention: Emanuel Poulos

- 1A. Further or alternatively, a declaration as to whether the Administrators may pool all (or some) of the Client Segregated Accounts and apply Regulation 7.8.03(6) to such pool(s), or whether Regulation 7.8.03(6) has to be applied separately to each such Segregated Account.
- 1B. Further or alternatively, a declaration as to whether the Administrators should pool the Client Segregated Accounts (subject to any particular exclusions, and if so, which) by grouping the Client Segregated Accounts into a number of pools and if so, comprising which Client Segregated Accounts, or alternatively a single pool.

Foreign Currencies

2. A direction as to whether the Administrators are justified in proceeding on the basis that foreign currency is "money" for the purposes of Division 2 of Part 7.8 of the *Corporations Act 2001* (Cth) and the Regulation.
3. A direction as to whether funds in foreign currency in Client Segregated Accounts (subject to any particular exclusions, and if so, which) should be converted to Australian dollars for the purpose of being distributed.
- 3A. Further or alternatively, a declaration that the Administrators may convert any balances in Client Segregated Accounts held in foreign currency into Australian dollars (subject to any particular exclusions, and if so, which) prior to distribution to the persons found to be entitled thereto.

Recoveries Questions

4. A direction, or alternatively a declaration, as to whether Futures Recoveries and OTC Recoveries are:
- (a) beneficially owned by MFGA; or
 - (b) held on trust for clients of MFGA.
- 4A. A direction as to whether Futures Recoveries and OTC Recoveries should be deposited by the Administrators into:
- (a) the general account of MFGA; or
 - (b) an existing Client Segregated Account or a new segregated account established by the Administrators, and if so, which account.
5. A direction, or alternatively a declaration, as to the manner in which Futures Recoveries and OTC Recoveries should be distributed having regard to the Regulation, insofar as such recovered funds are found pursuant to paragraph 4 above to be held on trust for clients of MFGA.

Entitlements Questions

6. A direction, or alternatively a declaration, as to the manner in which a client's entitlement to be paid out of the Client Segregated Account(s) for the purposes of the Regulation should be calculated, and as at what date.
- 6A. Further, a direction or alternatively a declaration as to whether the Administrators are entitled to set off positive net account balances against negative net account balances in all accounts owned by the same MFGA client.
- 6B. Further, a direction that the Administrators are justified in treating clients, in respect of each client account with a balance of \$1.00 or less, as having no entitlement to participate in Client Segregated Accounts, Futures Recoveries or OTC Recoveries, in respect each such account.6C. Further, a direction, or alternatively a declaration as to whether the Administrators should return all client deposits which were paid into the Client Segregated Accounts after the date of the Administrators'

appointment on 1 November 2011, on the basis that they were paid into such accounts in error within Regulation 7.8.03(6)(a), or otherwise.

- 6D. Further, a direction, or alternatively a declaration as to whether the Administrators are entitled to deduct from the Client Segregated Accounts (before any payment to clients) all amounts of GST which the Administrators are liable to remit to the Commissioner of Taxation on behalf of MFGA in respect of commissions charged by MFGA to clients (in accordance with the terms of the relevant client agreements), in relation to the closing out of clients' positions after the Administrators' appointment on 1 November 2011.

Other

7. An order or direction as to the appropriate source of payment and/or recoupment of the Administrators' remuneration and expenses in connection with administering property held by MFGA as trustee, including the Client Segregated Accounts, and the procedure to be adopted in connection with the payment of such remuneration and expenses, including the costs and expenses of this application.
8. An order or direction as to:
- (a) the persons to whom notice of these proceedings should be given; and
 - (b) the appointment of contradictors or representative defendants.
9. Liberty to the plaintiffs to apply to the court on two days' notice.
10. Any further or other orders or declarations as this honourable Court deems fit.

Definitions

Client Segregated Accounts means the bank accounts maintained by MFGA pursuant to Part 7.8 of the *Corporations Act 2001(Cth)*, being each of the 51 bank accounts of MFGA identified in paragraph 42 of the affidavit of Christopher Robert Campbell sworn herein on 21 December 2011.

Futures Recoveries means the payments received, or to be received, by the administrators pursuant to arrangements with clearing houses and other MF Global group companies in respect of futures and options contracts executed on behalf of MFGA's clients.

OTC Recoveries means the payments received, or to be received, by the administrators pursuant to agreements between MFGA and its hedge counterparties for the purpose of hedging MFGA's exposure to its clients.

Date:



Anthony Patrick Francis Ryan,
Solicitor for the plaintiffs

This application will be heard by
Square, Sydney at am on

at Law Courts Building, Queens

C. FILING

This originating process is filed by Blake Dawson, solicitors for the applicant.

D. SERVICE

The applicant's address for service is: c/- Blake Dawson
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Ref: APR EP 02-3000-0112

It is not intended to serve a copy of this originating process on any person other than the Australian Securities Investment Commission, and any defendant who may be joined to the proceedings as a representative defendant or otherwise.