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Where Is My MF Global Check?

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October 31 marked the two-year anniversary of the MF Global Collapse, when nearly $1.6 billion of customer funds went missing. To date, former MF Global customers who traded on US commodity exchanges have recovered 98% of their missing funds, and former customers who traded on overseas exchanges have recovered 78%.

On November 5 the bankruptcy court approved a plan for additional distributions that would restore 100% of all customer funds. A separate ruling by a federal district court on November 18 approved a CFTC Consent Order and cleared the way for these additional distributions to be made. News reports suggested that the remaining customer funds could be returned as soon as the end of December, and there was a sense of relief that the end was finally in sight.

But within days, an appeal of the Consent Order brought these distributions to a halt, and there will be no further distributions until this appeal makes its way through the courts. The appeal was filed by Jon Corzine and seven other former officers of MF Global, plus MF Global's accounting firm, all of whom are defendants in a civil suit filed by the bankruptcy trustee. At issue is the use of an "advance" of funds from other parts of the MF Global estate to make the brokerage customers whole.

Readers of previous farmdoc daily posts on MF Global here, here, here, and here will recall that accounts holding customer segregated funds are required to be kept separate, or "segregated," from the brokerage firm's own corporate funds. MF Global violated this requirement by tapping customer funds for other uses, taking care to return the borrowed funds by the end of the day when the segregated account balances were calculated. During the final week of MF Global's existence, as its financial condition deteriorated it failed to return customer funds totaling $900 million for domestic traders and $700 for foreign traders.

During this same period $700 million was transferred to MF Global's London office to cover shortfalls in MF Global's proprietary trading operations. When MF Global filed for bankruptcy, these funds were trapped in London, where they came under British bankruptcy laws. Other funds were tied up at exchanges, banks, other brokerage firms, and elsewhere within the MF Global empire.

US bankruptcy laws give special treatment to customer funds in the event of a brokerage firm failure. Because these funds belong to customers, not the brokerage firm, the law requires customer funds to be returned in full as the first step in any settlement process. Any remaining assets are then divided among the creditors. The problem at MF Global is that the customer accounts had been drained, so there were not sufficient funds to immediately make full payment to the customers.

Over the past two years, the bankruptcy trustee has been very successful in recovering the missing funds and returning them to former MF Global customers. However, at this stage most of the “easy money” has been recovered, and now it will require litigation – and time – to recover the rest. To speed things along for the customers who have been waiting for the rest of their money, the bankruptcy trustee received court approval to allocate funds from other parts of the MF Global estate so that all customers could be paid 100 cents on the dollar. As future settlements are received from lawsuits, insurance policies, and other sources, the bankruptcy trustee will use those proceeds to repay the bankruptcy estate. In effect, the general creditors are being made to wait so commodity customers can be paid first.

Those filing the appeal object to this approach, arguing that once the customers are paid in full, no further claims exist, and therefore the trustee has no right to pursue future claims against the former officers or the accounting firm on behalf of the former customers. In addition, because the customers are being paid in full, there were no “missing” funds; the funds were there all the time, but simply in the wrong places within MF Global’s corporate structure. This last view reduces the eighth-largest bankruptcy in history to little more than a bookkeeping error, and implies that the defendants did nothing wrong.

There has been no word from either side on what might happen next. However, it seems likely that customers will be waiting awhile before they receive the rest of the money they are owed.