

Exhibit A: Specific Limited Responses and the Trustee's Replies

1. Letter re Briefing re Allocation And Distribution Of Customer Property, submitted by Martin J. Bienenstock on behalf of the Statutory Creditors' Committee in the Chapter 11 Cases of MF Global Holdings Ltd. and MF Global Finance USA Inc. (Dewey & LeBoeuf LLP)	(ECF No. 778)
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<u>Response</u>	<u>Trustee's Reply*</u>
<ul style="list-style-type: none"> ▪ The Holdings Creditors' Committee suggests that CFTC Part 190 Regulations do not apply to the SIPA liquidation of MFGI because MFGI is not a chapter 7 debtor. (Ltr. at 2.) 	<ul style="list-style-type: none"> ▪ This legal position is clearly contravened by the plain language of SIPA. As the CFTC pointed out in its December 22, 2011 letter to the Court, SIPA § 78fff-1(a) vests the Trustee "with the same powers and title with respect to the debtor and the property of the debtor . . . as a trustee in a case under title 11," and further provides that the Trustee "shall be subject to the same duties as a trustee in a case under chapter 7 of title 11, including, if the debtor is a commodity broker, as defined under section 101 of such title, the duties specified in subchapter IV of such chapter 7." (Trustee's Reply ¶ 9 (citing 12/22/11 Letter from the CFTC re In re MF Global, Inc., ECF No. 781).) SIPA thus arms the Trustee with any additional powers available to a chapter 7 trustee. Accordingly, the Part 190 Regulations, including the customer property provision on which the Holdings Trustee focuses, apply in this proceeding. (Trustee's Reply ¶ 9.)

2. Response of Sapere Wealth Management LLC, Granite Asset Management and Sapere CTA Fund, L.P. to Briefing Regarding the Legal Principles and Framework for Allocation and Distribution (Ford Marrin Esposito Witmeyer & Gleser, L.L.P.)	(ECF No. 814)
<u>Response</u>	<u>Trustee's Reply</u>
<ul style="list-style-type: none"> ▪ If MFGI has a general estate, it should be allocated first to restoring deficiencies in commodity customers' segregated accounts, then to restoring deficiencies in securities customers' 	<ul style="list-style-type: none"> ▪ The Trustee believes that he has authority to seek to make allocations in appropriate circumstances as necessary but has not yet moved to do so as neither the total amount of shortfall to any fund of customer property nor the extent of

* The Trustee disputes that the Holdings Creditors' Committee has standing in this SIPA proceeding; the issue of standing is the subject of separate briefing requested by the Court.

<p>segregated accounts, then to general estate property. (Resp. at 4, 6.)</p> <ul style="list-style-type: none"> ▪ MFGI transferred commodities customers' segregated account assets from the FCM side of the MFGI business to the broker-dealer side of MFGI's operations and thence used the assets to make various payments of the MF Global worldwide enterprise. The equitable interest of the funds missing from segregated customer accounts remains with commodities customers, who therefore have priority. (Resp. at 4–5.) 	<p>general estate assets is yet known with any degree of certainty. (Trustee's Reply ¶ 2.)</p>
<ul style="list-style-type: none"> ▪ The Trustee has irreconcilable conflicting duties to commodity customers, securities customers, and creditors of the general estate. (Resp. at 6–13.) 	<ul style="list-style-type: none"> ▪ This position overlooks that the liquidation of joint FCM broker-dealers and the resolution of “competing interests” were specifically contemplated by the CFTC when it proposed the Part 190 Regulations. (Trustee's Reply ¶ 19 (citing 48 Fed. Reg. 57,535, 57,535 (Nov. 24, 1981).) In fact, trustees—whether chapter 11, chapter 7 or SIPA—routinely address conflicting demands by creditors, and the resolution of such conflicts does not constitute a breach of fiduciary duty. (Trustee's Reply ¶ 20 (citing <u>Kusch v. Mishkin</u> (<u>In re Adler, Coleman Clearing Corp.</u>), No. 95-08203 (JLG), 1998 WL 551972, at *17 (Bankr. S.D.N.Y. Aug. 24, 1998).) Numerous courts have recognized that in any insolvency proceeding there are inherent conflicts between classes of customers and creditors and that such conflicts do not warrant extraordinary protective measures. (Trustee's Reply ¶ 20 (citing <u>Official Unsecured Creditors' Comm. v. Stern</u> (<u>In re SPM Mfg. Corp.</u>), 984 F.2d 1305, 1317 (1st Cir. 1993); <u>Mirant Ams. Energy Mktg., L.P. v. Official Comm. of Unsecured Creditors of Enron Corp.</u>, No. 02-Civ-6274 (GBD), 2003 WL 22327118, at *7 (S.D.N.Y. Oct. 10, 2003); <u>In re Adelphia Commc'ns Corp.</u>, 359 B.R. 54, 64 (Bankr. S.D.N.Y. 2006); <u>In re Hills Stores Co.</u>, 137 B.R. 4, 5 (Bankr. S.D.N.Y. 1992); <u>In re Baldwin-United Corp.</u>, 45 B.R. 375, 376 (Bankr. S.D. Ohio 1983).)
<ul style="list-style-type: none"> ▪ Although the Trustee has a measure of discretion in respect of administrative matters relating to timing and form of distribution, nothing provides the Trustee with discretion to accommodate securities customers or anyone else in obviation of the protections afforded to commodities customers by Part 190. (Resp. at 13–15.) 	<ul style="list-style-type: none"> ▪ That SIPA accords the Trustee broad discretion in fulfilling his statutory duties is well-established and not contested by Respondents. (<u>See</u> Trustee's Mem. at 5.) The Part 190 Regulations also are replete with express references to the Trustee's discretion. (Trustee's Reply ¶ 21 (citing 17 C.F.R. § 190.02(d); 17 C.F.R. § 190.04(e)(4); 17 C.F.R. § 190.08(d)(1)(ii).) Respondents provide absolutely no relevant authority for stripping the Trustee of his authority. (Trustee's Reply ¶ 21.)
<ul style="list-style-type: none"> ▪ In light of the Trustee's conflicting duties, the Court should: (i) require the Trustee to share timely and fully with commodity customers the material details of the information he learns about what happened to their segregated-account funds; (ii) allow commodity customers to pursue possible claims and leads; and 	<ul style="list-style-type: none"> ▪ The Trustee alone has statutory investigative authority with respect to MFGI, and he alone has the unique responsibility of protecting its customers and administering the estate, including the responsibility to marshal customer assets in the manner Congress intended. As part of his investigation, the Trustee, with the assistance of his professionals, is analyzing his ability to obtain recoveries, by litigation or

<p>(iii) reserve to the Court alone the decision on the precedence of commodity customers' claims, with that decision to be made only after the potential general estate is identified. (Resp. at 15.)</p> <ul style="list-style-type: none"> One or more persons who are, or represent exclusively the interests of, commodity customers with segregated-account deficiencies should be afforded access to detailed information about what happened to their segregated-account funds; otherwise commodity customers would not have a meaningful opportunity to be heard in advance of actions taken or omitted to be taken by the Trustee with respect to recovery of assets going forward. (Resp. at 15–16.) 	<p>negotiation, against certain financial institutions, MFGI affiliates, and others to recover customer property. Respondents' attempt to interject or claim an oversight role with respect to the Trustee's investigation and pursuit of potential claims is not authorized by and is contrary to SIPA and the Bankruptcy Code. (Trustee's Reply ¶¶ 23-24 (citing Mem. Op. and Order 4, 6, ECF No. 459).)</p> <ul style="list-style-type: none"> Notwithstanding the Trustee's efforts to supply customers and the public with information as often as is feasible, the third party access and participation requested by Respondent are inconsistent with the Trustee effectively carrying out the investigation mandated by SIPA. Indeed, as this Court has previously recognized, the Trustee "must be permitted to conduct his investigation without being required to divulge his investigatory steps or the discovery obtained to any other party-in-interest." (Trustee's Reply ¶ 25 (citing Mem. Op. Granting SIPA Trustee's Mot. For an Order Granting Authority to Issue Subpoenas for the Produc. Of Docs. And the Examination of the Debtor's Current and Former Officers, Directors, and Employees and Other Persons 2, ECF No. 36).)
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3. Response of MF Global Hong Kong Ltd. (Provisional Liquidators Appointed) to Memoranda of Law filed by the CFTC, SIPC and the Trustee Regarding the Legal Principles and Framework for the Allocation and Distribution of Customer Property (Linklaters LLP) (ECF No. 817)	
<u>Response</u>	<u>Trustee's Reply</u>
<ul style="list-style-type: none"> MF Global Hong Kong Ltd.'s omnibus accounts for the benefit of clients of MF Global Hong Kong Ltd. are properly distinguishable from its proprietary claims. (Resp. at 4.) 	<ul style="list-style-type: none"> It is appropriate that this issue be reserved for the claims process. The Trustee also notes that the Court has authorized him to agree to alternative procedures for intercompany claims. (Trustee's Reply ¶ 17 (citing Order Approving Trustee's Expedited Appl. to Establish Parallel Customer Claims Processes and Related Relief 3, ECF No. 423).)

4. Response of Bruce Eisen, Dale Mancino, Denis Brink, Patrick O'Malley, M.D., and William Hackenberger to Trustee's Memorandum Regarding the Legal Principles and Framework for the Allocation and Distribution of Customer Property (Barnes & Thornburg LLP) (ECF No. 818)	
<u>Response</u>	<u>Trustee's Reply</u>
<ul style="list-style-type: none"> Because the physical commodities customers (i) paid in full for their physical commodities, which were (ii) specifically identifiable by serial numbers, (iii) were subject to documents of title held by the physical commodities customers, and (iv) were 	<ul style="list-style-type: none"> This argument overlooks the broad definition of "customer property" applicable to commodity broker liquidation, which includes "cash, a security or other property . . . received, acquired, or held by or for the account of the debtor, from or for the account of a customer," including, among other things, "specifically identifiable

<p>stored with depositories which acted as bailees for the physical commodities and charged storage fees for their services, the physical commodities customers have sole ownership of the physical commodities and it is doubtful whether the MFGI estate has the indicia of the type of interest needed to make the physical commodities property of the MFGI estate. (Resp. at 4.)</p> <ul style="list-style-type: none"> ▪ MFGI did not have the ability to buy, sell, margin, or in any way negotiate the warrants that reflected title to the physical commodities. MFGI also did not carry the physical commodities on its balance sheet. Thus, it is questionable whether MFGI ever properly negotiated title to the physical commodities from the physical commodities customers pursuant to UCC Article 7 prior to the commencement of the MFGI liquidation, and the physical commodities are not part of the MFGI estate. (Resp. at 5–7.) ▪ Irrespective of who holds legal title to the physical commodities, given MFGI’s representations, failure to provide value, and lack of evidence of control over the physical commodities—as well as the physical commodities customers’ ownership of the physical commodities—equity and good conscience dictate that the physical commodities are being held in a constructive trust for the physical commodities customers. (Resp. at 7.) 	<p>customer property”; a “warehouse receipt or other document held by the debtor evidencing ownership of or title to property to be delivered to fulfill a commodity contract from or for the account of a customer”; and “cash, a security or other property received by the debtor as payment for a commodity to be delivered to fulfill a commodity contract from or for the account of a customer.” (Trustee’s Reply ¶ 12 (quoting 11 U.S.C. § 761(10)).) There is no requirement for MFGI to have title or an equitable or beneficial interest in the Physicals for them to be considered customer property. (Trustee’s Reply ¶ 12.)</p>
<ul style="list-style-type: none"> ▪ Should the physical commodities be property of the MFGI estate, then they must be classified within the “delivery account” subclass, intended to protect customers with “specifically identifiable property” from the “dilutive effects of the <i>pro rata</i> provisions of the [CFTC Regulations].” (Resp. at 9.) ▪ The “delivery account” subclass should be liberally applied to all specifically identifiable property, irrespective of other account activity. (Resp. at 11.) 	<ul style="list-style-type: none"> ▪ This issue is fact-specific among individual claimants and as to particular Physicals, and must be resolved in the expedited customer claims process approved by the Court. For example, for any particular claimed Physical to meet the criteria to qualify as SIP that is part of a “delivery account,” as narrowly described in the Part 190 Regulations, it must be either a warehouse receipt, bill of lading or other document of title or physical commodity held specifically for the purpose of delivery or exercise, which as of the Filing Date is specifically identifiable on the debtor’s books and records as received from or for the account of a particular customer. For the Trustee to ascertain whether qualifying criteria are met for any particular claimed Physical will require fact-specific determinations based on reconciling MFGI’s books and records with individual claims. (Trustee’s Reply ¶ 16 (citing Trustee’s Mem. ¶ 24).) Once the Trustee has information on the range of customer claims to Physicals and how they are reflected on MFGI’s books and record, the determinations of net equity and account class can be undertaken in a consistent and fair way. (Trustee’s Reply ¶ 16.)
<ul style="list-style-type: none"> ▪ Both the CFTC Regulations and the Bankruptcy Code bar the Trustee from liquidating the physical commodities until there has been a formal determination of the physical commodities 	<ul style="list-style-type: none"> ▪ Respondents’ argument overlooks § 190.02(f) of the CFTC Regulations, which specifically contemplates the liquidation of Physicals prior to a determination of the Physicals customers’ net equity or pro rata distribution after the transfers authorized

<p>customers' <i>pro rata</i> distribution (let alone by the January 31st deadline when the customer claim forms are due). (Resp. at 3, 12.) To allow the Trustee to distribute the physical commodities <i>pro rata</i> among all customers or to liquidate the physical commodities would violate the physical commodities customers' rights under Bankruptcy Code § 766 and §§ 190.05 and 190.08 of the CFTC regulations. Moreover, such actions could result in conversion of the physical commodities. (Resp. at 2–3.)</p>	<p>by § 190.06 are completed. (Trustee's Reply ¶ 15.) The requirement that customer property be distributed ratably applies to SIP. (See Trustee's Mem. ¶¶ 33, 35 (citing CFTC Interpretive Letter No. 90-1 (Jan. 19, 1990); 46 Fed. Reg. 57,535, 57,538)); <u>see also</u> 11 U.S.C. § 766(h). The Court's December 12, 2011 Order approving the third bulk transfer of MFGI commodity customer property to other FCMs authorized the Trustee to distribute Physicals to MFGI's former customers on the same <i>pro rata</i> distribution basis applicable to accounts of U.S. Segregated Property Customers, without prejudice to any future determination of whether the Physicals or some subset thereof, constitutes a separate class of customer property or is entitled to disparate treatment. (See Order Granting Expedited Mot. to Approve Further Transfers and Distributions for MF Global Inc. United States Commodity Futures Customers 2, ECF No. 717.)</p>
<ul style="list-style-type: none"> ▪ If the Court intends to allow the Trustee to liquidate, the physical commodities customers seek the Court's permission to take immediate Rule 2004 examinations of (i) the Trustee, regarding the physical commodities customers' MFGI accounts and the physical commodities and (ii) any entity acting as a bailee or depository of the physical commodities. ▪ The physical commodities customers also ask that they be afforded the opportunity to present evidence that the physical commodities are not property of the MFGI estate, in a hearing prior to January 31, 2012 (the date after which the Trustee presently intends to liquidate the assets). (Resp. at 8.) ▪ Before the Trustee is allowed to liquidate physical commodities, the Trustee should be required to adduce evidence that (i) MFGI had a sufficient possessory interest in the physical commodities so as to make those commodities "property" of the estate. (Resp. at 2.) ▪ Before the Trustee is allowed to liquidate physical commodities, the Trustee should be required to adduce evidence that (ii) MFGI held the physical property for some purpose other than "delivery or exercise." (Resp. at 2.) 	<ul style="list-style-type: none"> ▪ These requests are inconsistent with the Trustee's statutory authority and duties with respect to MFGI. Rule 2004 discovery creates enormous burden for the Trustee, and should be reserved for exceptional circumstances. (Trustee's Reply ¶ 25 & n.6.) Respondents have not demonstrated exceptional circumstances that would warrant Rule 2004 discovery to the detriment of MFGI's former customers and creditors as a whole. (Trustee's Reply ¶ 25.) ▪ The argument that the Physicals are not property of the MFGI estate overlooks the broad definition of "customer property" applicable to commodity broker liquidation, which includes "cash, a security or other property . . . received, acquired, or held by or for the account of the debtor, from or for the account of a customer," including, among other things, "specifically identifiable customer property"; a "warehouse receipt or other document held by the debtor evidencing ownership of or title to property to be delivered to fulfill a commodity contract from or for the account of a customer"; and "cash, a security or other property received by the debtor as payment for a commodity to be delivered to fulfill a commodity contract from or for the account of a customer." (Trustee's Reply ¶ 12 (quoting 11 U.S.C. § 761(10)).) There is no requirement for MFGI to have title or an equitable or beneficial interest in the Physicals for them to be considered customer property. (Trustee's Reply ¶ 12.) ▪ This issue of whether particular Physicals meet the criteria to qualify as SIP that is part of a "delivery account," as narrowly described in the Part 190 Regulations, is properly reserved for determination during the expedited claims process. (Trustee's Reply ¶ 16 (citing Trustee's Mem. ¶ 24).) Once the Trustee has information on the range of customer claims to Physicals and how they are reflected on MFGI's books and record, the determinations of net equity and account class can be undertaken in a consistent and fair way. (Trustee's Reply ¶ 16.)

5. Response of Commodity Customer Coalition to Trustee’s Memorandum Regarding the Legal Principles and Framework for the Allocation and Distribution of Customer Property (Barnes & Thornburg LLP) (ECF No. 819)	
<p style="text-align: center;"><u>Response</u></p>	<p style="text-align: center;"><u>Trustee’s Reply</u></p>
<ul style="list-style-type: none"> ▪ Customers are entitled to a first-priority interest (with the exception of certain administrative expenses) in any and all MFGI property, to the extent needed in order to fill the reported \$1.2 billion shortfall in customer segregated funds. (Resp. at 2, 3, 5.) ▪ The concept of customer property is broadly defined and expansively construed, regardless of whether the property was specifically segregated or even traceable to a customer account, to include as much of the debtor’s property as is needed to ensure that customers receive a complete return of their property. (Resp. at 5.) ▪ Customers’ first priority right must follow customer funds to each and every entity to or through which customer funds flowed. (Resp. at 2.) ▪ MFGI commodity customers ought to receive a first-priority right over all other creditors to the extent needed to make them whole—whether such property is considered “other property” of MFGI, is found at entities other than MFGI, or passed through entities other than MFGI. (Resp. at 6.) 	<ul style="list-style-type: none"> ▪ The definition of “customer property” in section 761 of the Bankruptcy Code commodity broker liquidation subchapter encompasses substantially more than just the segregated or traceable property of commodity customers, including “property that was unlawfully converted from and that is the lawful property of the estate,” and “other property of the debtor that any applicable law, rule <u>or regulation</u> requires to be set aside or held for the benefit of a customer, unless including such property as customer property would not significantly increase customer property.” (Trustee’s Reply ¶ 10 (citing 11 U.S.C. §§ 761(10)(A)(viii), (ix) (emphasis added)).) SIPA contains similar provisions for property of securities customers. These broad provisions enable the Trustee to take actions to marshal additional property to benefit commodity and securities customers in certain circumstances. There is no point in arguing over the scope of such powers now based on speculation about potential conflicts with respect to hypothetical assets. The Trustee may move to allocate specific assets in a specific manner at an appropriate time and will do so on notice to all customers and creditors. (Trustee’s Reply ¶ 10.)
<ul style="list-style-type: none"> ▪ The Bankruptcy Code requires the Trustee to bring avoidance actions to recover improperly transferred property, which is to be returned to the MFGI estate and treated as customer property subject to distribution, even if such property is found at MF Global Holdings Ltd. and its subsidiaries, or any other entity. (Resp. at 6.) ▪ The Trustee must immediately begin to pursue claims to recover customer funds (even if it requires an entity to or through which customer funds flowed to give up alternative funds), so that decisions about distribution and allocation of customer property in these proceedings can be made quickly and efficiently. (Resp. at 2–3, 9.) 	<ul style="list-style-type: none"> ▪ The Trustee alone has statutory investigative authority with respect to MFGI, and he alone has the unique responsibility of protecting its customers and administering the estate, including the responsibility to marshal customer assets in the manner Congress intended. As part of his investigation, the Trustee, with the assistance of his professionals, is analyzing his ability to obtain recoveries, by litigation or negotiation, against certain financial institutions, MFGI affiliates, and others to recover customer property. (Trustee’s Reply ¶ 23.) Respondents’ attempt to interject or claim an oversight role with respect to the Trustee’s investigation and pursuit of potential claims is not authorized by and is contrary to SIPA and the Bankruptcy Code. (Trustee’s Reply ¶ 24 (citing Mem. Op. and Order 4, 6, ECF No. 459).)

<ul style="list-style-type: none"> ▪ To the extent that MF Global Holdings Ltd. or any other parties impermissibly received customer property from MFGI, they held customer property in trust for MFGI customers subject to the requirements of the Commodity Exchange Act and CFTC regulations, and are liable for any violations of those strictures. (Resp. at 6–8.) ▪ To the extent that MF Global Holdings Ltd. or any other entity received customer property and improperly disposed or converted it, MFGI customers should be granted a first priority lien against that entity’s cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents under trust principles. (Resp. at 8.) 	<ul style="list-style-type: none"> ▪ The Trustee believes that he has authority to seek to make allocations in appropriate circumstances as necessary but has not yet moved to do so as neither the total amount of shortfall to any fund of customer property nor the extent of general estate assets is yet known with any degree of certainty. (Trustee’s Reply ¶ 2.)
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6. Response of Alexander Coxe, Greenbriar Partners, L.P., and Paul Polger to Trustee’s Memorandum (ECF No. 822) Regarding the Legal Principles and Framework for the Allocation and Distribution of Customer Property (Foley & Lardner LLP)	
<u>Response</u>	<u>Trustee’s Reply</u>
<ul style="list-style-type: none"> ▪ Metals assets (<i>i.e.</i>, custodial metals receipts, metals warrants, and metals warrants proceeds) are not “customer property” under § 761(10) of the Bankruptcy Code and CFTC Rules 190.01(n) and 190.08(a) subject to the <i>pro rata</i> distribution provisions in § 766(h) of the Bankruptcy Code. Thus, the principles set forth in the Trustee’s Memorandum do not apply to metals assets. (Resp. at 5–6.) 	<ul style="list-style-type: none"> ▪ The argument that the metals assets are not “customer property” under § 761(10) of the Bankruptcy Code and CFTC Rules 190.01(n) and 190.08(a) subject to the <i>pro rata</i> distribution provisions in § 766(h) of the Bankruptcy Code requires fact-specific determination which should be resolved as part of the expedited claims process.
<ul style="list-style-type: none"> ▪ Metal assets are held in trust by MFGI solely as custodian, for the sole benefit of the metals clients and are not property of MFGI’s estate under § 541 of the Bankruptcy Code. (Resp. at 5, 8.) ▪ Section 541(d) of the Bankruptcy Code specifies that “the property of the bankruptcy estate does not include any interest in which the debtor holds only bare legal title” and no equitable interest. Thus, property that was held in trust by the debtor is not “property of the estate” under § 541 of the Bankruptcy Code. (Resp. at 7.) 	<ul style="list-style-type: none"> ▪ The argument that the metals assets are not property of the MFGI estate under Bankruptcy Code § 541 overlooks the broad definition of “customer property” applicable to commodity broker liquidation, which includes “cash, a security or other property . . . received, acquired, or held by or for the account of the debtor, from or for the account of a customer,” including, among other things, “specifically identifiable customer property”; a “warehouse receipt or other document held by the debtor evidencing ownership of or title to property to be delivered to fulfill a commodity contract from or for the account of a customer”; and “cash, a security or other property received by the debtor as payment for a commodity to be delivered to fulfill a commodity contract from or for the account of a customer.” (Trustee’s Reply ¶ 12 (quoting 11 U.S.C. § 761(10)).) There is no requirement for

	MFGI to have title or an equitable or beneficial interest in the Physicals for them to be considered customer property. (Trustee's Reply ¶ 12.)
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7. Memorandum of Law of John Cassimatis in Response to Memoranda of the Trustee, the Commodity Futures Trading Commission, and the Securities Investor Protection Corporation Regarding the Legal Principles and Framework for the Allocation and Distribution of Customer Property (Blank Rome LLP) (ECF No. 823)	
<u>Response</u>	<u>Trustee's Reply</u>
<ul style="list-style-type: none"> ▪ Physical metals, in this case silver, are specifically identifiable property which belong in an account class with other holders of physical property. (Resp. ¶¶ 3, 13.) ▪ Failing to treat specifically identifiable property in its own class and subjecting physical holders to a loss is contrary to the purposes of the commodity laws. (Resp. ¶ 28.) ▪ If physical property is treated as specifically identifiable property in its own account class, it will not materially affect distributions to other customers in this case. (Resp. ¶ 29.) ▪ Holders of physical property such as silver and gold have suffered severe losses in many cases due to the Trustee's failure to promptly return, liquidate, or sufficiently hedge specifically identifiable property. Any loss attributed to the decline in value of a physical metal between the Filing Date and the date of distributions is a customer claim entitled to an additional distribution. The return of physical property was within the Trustee's control, and thus the risk of loss runs to the estate due to the Trustee's delays. (Resp. ¶¶ 3, 15, 25.) ▪ Bankruptcy Code § 766, 17 C.F.R. § 190.02, 17 C.F.R. § 190.03, and Appendix Form 1 to the CFTC Part 190 Regulations require an earlier return or liquidation of specifically identifiable property and are consistent with the policy that the property of customers must be returned or liquidated in a prompt manner. Further, 17 C.F.R. § 190(f) includes a provision requiring a trustee to take immediate action to liquidate specifically identifiable property when the value of such property is declining. (Resp. ¶¶ 16–22.) ▪ With permission from the CFTC, the Trustee could have taken 	<ul style="list-style-type: none"> ▪ This issue is fact-specific among individual claimants and as to particular Physicals, and therefore must be resolved in the expedited customer claims process approved by the Court. For example, for any particular claimed Physical to meet the criteria to qualify as SIP that is part of a “delivery account,” as narrowly described in the Part 190 Regulations, it must be either a warehouse receipt, bill of lading or other document of title or physical commodity held specifically for the purpose of delivery or exercise, which as of the Filing Date is specifically identifiable on the debtor's books and records as received from or for the account of a particular customer. For the Trustee to ascertain whether qualifying criteria are met for any particular claimed Physical will require fact-specific determinations based on reconciling MFGI's books and records with individual claims. (Trustee's Reply ¶ 16 (citing Trustee's Mem. ¶ 24).) Once the Trustee has information on the range of customer claims to Physicals and how they are reflected on MFGI's books and record, the determinations of net equity and account class can be undertaken in a consistent and fair way. (Trustee's Reply ¶ 16.) ▪ The Respondents' differing positions regarding Physicals and the fact-specific nature of their assertions serves to highlight that the individual claims must be resolved in the expedited customer claims process approved by the Court. (Trustee's Reply ¶¶ 14, 16.) ▪ Section 190.02(f) of the CFTC Regulations specifically contemplates the liquidation of Physicals after the transfers authorized by § 190.06 are completed. (Trustee's Reply ¶ 15.) The requirement that customer property be distributed ratably applies to SIP. (See Trustee's Mem. ¶¶ 33, 35 (citing CFTC Interpretive Letter No. 90-1 (Jan. 19, 1990); 46 Fed. Reg. 57,535, 57,538)); see also 11 U.S.C. § 766(h). The Court's December 12, 2011 Order approving the third bulk transfer of MFGI commodity customer property to other FCMs authorized the Trustee to distribute Physicals to MFGI's former customers on the same pro rata distribution basis applicable to accounts of U.S. Segregated Property Customers, without

other actions such as hedging to protect metals clients from the risk of loss, pursuant to 17 C.F.R. § 190.04(d). (Resp. ¶ 26.)	prejudice to any future determination of whether the Physicals or some subset thereof constitutes a separate class of customer property or is entitled to disparate treatment. (See Order Granting Expedited Mot. to Approve Further Transfers and Distributions for MF Global Inc. United States Commodity Futures Customers, 2, ECF No. 717.)
<ul style="list-style-type: none"> In the alternative, if the Court determines that physical metals are not specifically identifiable property, warehouse receipts for metals should not be considered property of the estate and thus are not subject to the distribution scheme under the commodity laws. (Resp. ¶ 3.) 	<ul style="list-style-type: none"> This argument overlooks the broad definition of “customer property” applicable to commodity broker liquidation, which includes “cash, a security or other property . . . received, acquired, or held by or for the account of the debtor, from or for the account of a customer,” including, among other things, “specifically identifiable customer property”; a “warehouse receipt or other document held by the debtor evidencing ownership of or title to property to be delivered to fulfill a commodity contract from or for the account of a customer”; and “cash, a security or other property received by the debtor as payment for a commodity to be delivered to fulfill a commodity contract from or for the account of a customer.” (Trustee’s Reply ¶ 12 (quoting 11 U.S.C. § 761(10)).)

8. Trustee’s Response to Briefing Regarding the Legal Principles and Framework for Allocation and Distribution of Customer Property (Morrison & Foerster LLP) (ECF No. 824)	
<u>Response</u>	<u>Trustee’s Reply</u>
<ul style="list-style-type: none"> The SIPA Trustee, SIPC, and the CFTC have acknowledged in their briefs the inconsistency between the plain language in Bankruptcy Code § 766(j)(2) and 17 C.F.R. § 190.08(a)(1)(ii)(j), each addressing how the claims for a shortfall in customer property are to be treated in the liquidation of a commodity broker. (Resp. ¶ 5.) The Statutory Creditors’ Committee for the Chapter 11 Cases has correctly stated in its letter to the Court that the Part 190 Regulations do not apply in a SIPA proceeding because a SIPA proceeding is not a case under chapter 7. (Resp. ¶ 8.) Accordingly, the plain language of Bankruptcy Code § 766(j)(2) should prevail. (Resp. ¶ 8.) Bankruptcy Code § 766(j)(2) requires a ratable distribution of non-customer assets among MFGI’s general estate creditors, including customers that have deficiency claims. (Resp. ¶ 9.) 	<ul style="list-style-type: none"> This legal position is clearly contravened by the plain language of SIPA. As the CFTC pointed out in its December 22, 2011 letter to the Court, SIPA § 78fff-1(a) vests the Trustee “with the same powers and title with respect to the debtor and the property of the debtor . . . as a trustee in a case under title 11,” and further provides that the Trustee “shall be subject to the same duties as a trustee in a case under chapter 7 of title 11, including, if the debtor is a commodity broker, as defined under section 101 of such title, the duties specified in subchapter IV of such chapter 7.” (Trustee’s Reply ¶ 9 (citing 12/22/11 Letter from the CFTC re In re MF Global, Inc., ECF No. 781).) SIPA thus arms the Trustee with any additional powers available to a chapter 7 trustee. Accordingly, the Part 190 Regulations, including the customer property provision on which the Holdings Trustee focuses, apply in this proceeding. (Trustee’s Reply ¶ 9.)
<ul style="list-style-type: none"> MF Global Holdings Ltd. has substantial intercompany claims against MFGI on account of the significant intercompany loans 	<ul style="list-style-type: none"> The definition of “customer property” in section 761 of the Bankruptcy Code commodity broker liquidation subchapter encompasses substantially more than just

made to MFGI. The funding is traceable and is separate from customer property, and thus any recoveries related to such funding should not be diverted by the SIPA Trustee to a customer property pool where customers enjoy priority to the detriment of creditors of the MFGI estate. (Resp. ¶ 9.)

the segregated or traceable property of commodity customers, including “property that was unlawfully converted from and that is the lawful property of the estate,” and “other property of the debtor that any applicable law, rule or regulation requires to be set aside or held for the benefit of a customer, unless including such property as customer property would not significantly increase customer property.” 11 U.S.C. §§ 761(10)(A)(viii), (ix) (emphasis added). SIPA contains similar provisions for property of securities customers. These broad provisions enable the Trustee to take actions to marshal additional property to benefit commodity and securities customers in certain circumstances. There is no point in arguing over the scope of such powers now based on speculation about potential conflicts with respect to hypothetical assets. The Trustee may move to allocate specific assets in a specific manner at an appropriate time and will do so on notice to all customers and creditors. (Trustee’s Reply ¶ 10.)