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BY FACSIMILE - (212) 805-6382

The Honorable Victor Marrero
United States District Court
500 Pearl Street
New York, New York 10007

Re: *DeAngelis v. Corzine*, 11-cv-7866 (VM) (JCF) (USCFTC)

Dear Judge Marrero:

We write on behalf of Defendant Jon S. Corzine in response to the CFTC's request for a pre-motion conference on its proposed motion for summary judgment against Mr. Corzine and Defendant Edith O'Brien. Respectfully, the CFTC's letter grossly mischaracterizes the evidence, ignores contradictory evidence and applicable legal precedent, and fails to provide any basis for summary judgment in favor of the CFTC.

The Evidence Does Not Support The CFTC's Claims

The CFTC does not, and cannot, deny the following:

- Mr. Corzine never directed, authorized, encouraged, or countenanced any violation of the CEA or CFTC Regulations by MF Global or any of its employees.
- Mr. Corzine was not told about the apparent deficit in MF Global's customer segregated accounts until very late on Sunday night, October 30, 2011, *two days after the transfers in question and the night before bankruptcy was filed.*
- Mr. Corzine was never told – at any time prior to the night of October 30, 2011 – that the firm was even *at risk* of violating the CEA or CFTC Regulations relating to the handling of customer funds.

In the absence of any such evidence, the CFTC's proposed motion for summary judgment relies on unsupported claims about what Mr. Corzine supposedly knew or should have understood, as well as the following mischaracterizations of the record:

First, as evidence of a supposed "lack of good faith," the CFTC claims that Mr. Corzine "knew that one policy—one that was specifically designed to protect customer funds—

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was ignored and/or violated on multiple occasions." This is an apparent reference to MF Global's practice whereby the firm used the so-called "Alternative Method," *which, under applicable CFTC Regulations, allowed it to make lawful use of certain customer secured funds*, but still sought to maintain "excess" representing the firm's own funds in segregated and secured customer accounts. In fact, on the handful of occasions when the firm failed to maintain "excess" funds over and above the net liquidating value of all customer deposits, MFGI promptly took actions to protect customer funds, and, on one occasion, locked up funds in the Rule 15c3-3 account. Nothing remotely suggests that any internal policy was being ignored or violated. To the contrary, when the internal policy was triggered, actions were taken to address the issue.

Second, as evidence of Mr. Corzine's supposed "constructive knowledge" of MF Global's unlawful use of customer segregated funds, the CFTC relies on Mr. Corzine's testimony that, on the morning of Friday, October 28, 2011 (three days before the bankruptcy), he directed Ms. O'Brien to address overdrafts at JPMorgan Chase. In fact, as both Mr. Corzine and Ms. O'Brien testified, Mr. Corzine did *not* know that the transfer would or did come from a customer account, much less a *segregated* customer account. Ms. O'Brien also sent Mr. Corzine confirmation that the transfer had been made from a "house" account. The Global Treasurer, *who had received the same available liquidity report as Mr. Corzine the previous night*, testified that he is the one who told Ms. O'Brien to transfer $175 million. The Global Treasurer further testified that *he* did not believe this transfer involved any customer funds. For her part, Ms. O'Brien testified that *she* believed she had $565 million in available funds. Any suggestion that Mr. Corzine somehow knew that this transfer was unlawful, even though the Treasury personnel who actually facilitated the transfer of the funds did not know, is just preposterous.

The CFTC Cannot Establish Controlling Person Liability

A "controlling person" claim requires proof of: "(1) an underlying violation; (2) control by the defendant, direct or indirect, over the person or entity that committed the underlying violation; (3) either (a) absence of good faith … *or* (b) knowing inducement, directly or indirectly …." *Commodity Futures Trading Comm'n v. Standard Forex, Inc.*, 1993 WL 809966, at *13 (E.D.N.Y. Aug. 9, 1993).

The CFTC's letter completely elides the issue of whether MF Global's customer segregated accounts were actually undersegregated at the time of any of the 154 allegedly unlawful transfers alleged in the Amended Complaint. The CFTC alleges that the accounts were undersegregated as of Wednesday, October 26, 2011, and at all times on October 27 and 28 (Compl. ¶ 62). But, the CFTC's own expert has now not only

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withdrawn his opinion that the accounts were undersegregated at the end of the day on October 26 but also admits he did not determine whether the accounts were undersegregated at the time of any particular transfer. Without evidence that any transfer was a violation, Mr. Corzine cannot be held responsible as a controlling person.

Nor does the CFTC cite any evidence that would support a finding of "control." Mr. Corzine did not have the ability to transfer funds in and out of MF Global's bank accounts. Such transfers were subject to authorization by finance, treasury, and operations personnel in Chicago. Mr. Corzine's "general control over MF Global and his broad strategic responsibilities" are not sufficient. All CEOs exercise this kind of control. Yet the title and attendant powers of a chief executive do not automatically make that person a control person under Section 13(b).

Furthermore, as explained more fully in our letter requesting a pre-motion conference on Mr. Corzine's motion for summary judgment against the CFTC, the CFTC cannot establish Mr. Corzine's "culpable participation" in any of the 154 allegedly unlawful transfers from customer segregated accounts.

The CFTC Cannot Establish A Failure To Supervise Diligently

The CFTC claims that Mr. Corzine failed to supervise diligently by his supposed "failure to establish and ensure adequate controls and systems with regard to liquidity management, liquidity forecasting, regulatory reporting, and compliance with firm policy regarding the use of customer funds." In fact, Mr. Corzine delegated responsibility for these matters to experienced and competent personnel in the finance, treasury, compliance, and legal departments. MF Global had an extensive set of policies and procedures in place to ensure the protection of customer funds. These policies and procedures were subject to multiple internal, external, and regulatory audits, none of which identified a material risk to customer funds. The CFTC's hindsight claims, based on a handful of internal audit findings, which were also distributed to multiple members of senior management, as well as the audit and risk committee of the board, do not remotely suggest any dereliction of duty by Mr. Corzine.

Finally, the CFTC makes no attempt to support its claim that a single course of alleged misconduct – the supposed failure to establish adequate controls – should be treated as 154 "separate" violations of Rule 166.3. As explained in Mr. Corzine's letter requesting a pre-motion conference, no principle of law or logic supports this extravagant claim.

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Respectfully submitted,

A Levander /MKW

Andrew J. Levander

cc: Counsel for Plaintiff U.S. Commodity Futures Trading Commission
Counsel for Defendant Edith O'Brien

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The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by Defendant Jon Corzine.

SO ORDERED.

12-22-15
DATE

VICTOR MARRERO, U.S.D.J.