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Lawyer Targeting MF Global Sees Massive Case In Store

By **Pete Brush**

Law360, New York (November 04, 2011, 8:06 PM ET) -- The attorney responsible for launching the first investor lawsuit against MF Global Holdings Ltd. told Law360 that no stone will be left unturned as he and other plaintiffs' firms gear up for an all-out legal assault on Jon Corzine and a slew of others tied to the broker-dealer's multibillion-dollar collapse.

On Thursday, Jeffrey C. Block and other attorneys from Boston-based Block & Leviton LLP launched a suit against Corzine — the former New Jersey governor who resigned Friday as CEO of MF Global— along with Chief Financial Officer Henri J. Steenkamp, Chief Operating Officer Bradley I. Abelow and Chief Risk Officer Michael G. Stockman, accusing the executives of tricking investors.

The suit came at the end of a very bad week for MF Global, which filed for bankruptcy on Monday amid reports that nearly \$700 million in client funds were missing. Since then, the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission said they were looking into the firm's dealings, and the FBI is also said to be examining whether the company commingled customers' money with the company's accounts.

Because events are moving so quickly, Block said his lawsuit had the potential to morph and grow as facts emerge.

"We're going to investigate," he said. "We're going to look into whether there are other possible claims against other parties, or counterparties — but we're not there yet."

Block's suit, brought on behalf of investor Joseph DeAngelis, says MF Global suffered from a crippling cash shortage because of its bad bets on European debt back in May even as Corzine and his colleagues told investors it had built a "global, robust risk-management environment."

In its current form, the suit makes control-person liability claims, which target the executives' assets — but not the company's — on the theory that they are liable for making shareholders think MF Global, now protected by a bankruptcy litigation stay, was a good investment.

"Someone who has the power to direct a corporation can be held secondarily liable," Block said, explaining the claims.

Block noted that stockholders typically end up last at the trough in bankruptcy, meaning investors who believe they were led down the garden path by Corzine will be unwilling to rely on the efforts of a possible Chapter 11 trustee. But even so, he wouldn't rule out the possibility of additional claims in bankruptcy court.

"I'm not sure, practically, if there would be anything for shareholders to collect in a bankruptcy proceeding, but we're looking into it," Block said.

Block also predicted other plaintiffs' firms would file their own suits, leaving a potential struggle to see which plaintiffs' firm would end up in control. His prediction dovetailed with legal experts who said Friday that claims against many other businesses tied to MF Global likely were in the offing.

"Investors will look at insurance policies," said Frandzel Robins Bloom & Csato LC creditor rights litigator Craig A. Welin. "They will look at the accountants who did audits. They will scrutinize MF Global's offerings to make sure they were accurate. This is going to be a bonanza for plaintiffs' lawyers."

The prediction of a barrage of lawsuits comes amid initial assessments by the CME Group Inc. that MF Global may have drawn on as much as \$700 million in customer funds to shore up losses on bad investments on European debt — a report MF Global denied in bankruptcy court this week — and after the Securities Investor Protection Corp.'s announcement that it would begin the liquidation of MF Global's brokerage unit "to protect the investing public."

The obvious No. 1 target is likely to be Corzine, experts said, not just because of his deep pockets — he reportedly is a billionaire — but also because of suspicion he may have resigned in a bid to protect his assets despite the fact that he declined a \$12 million golden parachute from MF Global.

"The fact that he resigned a few days after the bankruptcy and that he's foregoing his severance certainly adds to the suspicion. It certainly raised my eyebrows when I looked at it this morning," Block said.

Corzine's many speeches calling for fiscal discipline could serve to further embolden plaintiffs, lawyers said. In one such speech, played over and over again on websites like Youtube.com, Corzine warned that policies must be enacted to avoid a repeat of the 2008 financial crisis.

Even as Corzine warned about too much leverage, his firm was over-leveraged by massive ratios, according to reports.

Block vowed his firm would "look at all of Corzine's statements," to see if any potential liability stems from those comments.

"It's an amazing fall from grace. You are former governor on the short list for Treasury secretary, and now you're hiring defense attorneys," said Tim Loughran, professor of finance at the University of Notre Dame's Mendoza College of Business.

While Corzine is the obvious target, the suits won't stop there, experts said.

"Look at the size and the scope of it all. You're looking at \$700 million that's missing and unaccounted for," said Mark P. Fickes, who recently joined trial firm BraunHagey LLP after seven years at the SEC.

For that reason, according to Fickes and Welin, auditors who worked on MF Global's financial statements almost certainly will be targeted. Lawyers, too, could find themselves on the business end of investor claims, they said.

"Law firms could find themselves ensnared. If they wrote opinion letters regarding MF Global's investment offerings, I can see how people would want to see what they knew," Fickes said.

Banking industry players are another likely target, Fickes pointed out, especially if they, as counterparties to MF Global's investments, were paid with money that was supposed to have been segregated in customer accounts.

Further incentivizing shareholders to take legal action outside of bankruptcy court, according to Welin, is the Second Circuit's Wagoner Doctrine, established in cases including Shearson Lehman Hutton Inc. v. Wagoner, which holds that a trustee for a bankrupt corporation cannot pursue claims against those who defrauded the corporation.

"There's a body of law in the Second Circuit that could become problematic for a bankruptcy trustee to pursue claims against third parties," Welin said.

Perhaps ironically, according to Welin, the Wagoner precedent means investors targeting

nonbankrupt third parties tied to MF Global might have better results.

"Investors aren't really stuck with that limitation — they have a cleaner shot to victory," Welin said.

--Editing by Anne Urda and John Williams.

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