

IMPORTANT MESSAGE ON CREDITOR CLAIMS

On January 13, 2011, a hearing was held before the United States Bankruptcy Court for the Southern District of New York seeking approval of the settlement between Irving H. Picard, the Trustee for the liquidation of BLMIS (“Trustee”), and the estate of Jeffrey Picower.

At that hearing, certain objections were raised by counsel opposing the settlement. The objectors stated that the Trustee's efforts in recovering assets would only benefit “net losers” whose claims have been allowed by the Trustee. They also questioned why the Trustee has brought suits against various defendants for amounts that exceed the amount of allowed claims, which are currently valued at approximately \$6.86 billion. These same objectors have now appealed the order approving the settlement by the Bankruptcy Court to the District Court.

These objections and appeals are factually and legally incorrect, and misleading. The Trustee represents all customers and creditors of Bernard L. Madoff Investment Securities LLC (“BLMIS”).

The liquidation proceeding of BLMIS is that of a failed, bankrupt brokerage house. As is the case in any bankruptcy, the law provides for an orderly process whereby claims are submitted, assets are recovered, and creditors are paid from the estate in accordance with the hierarchy set forth in the governing statute.

In this case, the Securities Investor Protection Act (“SIPA”) provides the legal framework that defines eligibility of claims and the hierarchy of creditors. Under SIPA, priority is given to customers with valid net equity claims, who will be paid from the fund of customer property (“Customer Fund”) assembled by the Trustee. General creditors will be paid from the general estate (“General Estate”), also assembled by the Trustee.

BLMIS was a Ponzi scheme engineered by Bernard Madoff and others in which virtually no investments were made on behalf of BLMIS customers. Money deposited in BLMIS was stolen from some customers and paid to other customers. Thus, no “profits” were made and distributed to customers—the only thing anyone received was other people’s money.

When the Ponzi scheme collapsed, there were two large classes of investors. Both invested principal in the scheme, and both received fraudulent statements showing that those funds were invested. One class, however – the “net winners” – has not only already recovered all of their principal through withdrawals, but also received some amount of the fictitious profits shown on their statements. Because there were no profits, this money came from other investors. The second class deposited principal but had not received all or even some of it back as of the day of the collapse. This class – the “net losers” – is the one that funded payments to the first class. This class has valid net equity claims.

As defined by SIPA, BLMIS customers with valid net equity claims – “net losers” – have a preferred status and will be paid from the Customer Fund first. If the Trustee is able to satisfy all claims of the preferred customer class, that will represent the first time that all customers of

BLMIS will stand equal in terms of their losses from BLMIS and their status as creditors of the General Estate.

All BLMIS creditors could potentially receive distributions from the General Estate. In addition to the customers of BLMIS, the creditors of the General Estate would include individuals and companies who provided services to BLMIS and are owed money for these services, all of whom have claims against the BLMIS estate for misrepresentation, fraud, and breach of contract. Thus, those claimants whose customer claims were denied because they withdrew more money from BLMIS than they deposited, would be eligible along with all other customers of BLMIS to receive a distribution on their general creditor claims for fraud.

Distributions from the General Estate can only occur after objections and appeals to the Trustee's methodology are completed and if and when the Trustee recovers more than the final amount of allowed customer claims asserted against the BLMIS estate.

The Trustee represents all of the customers and creditors of BLMIS. In his capacity as Trustee of the BLMIS estate, the Trustee is seeking to assemble the largest sum of money possible for the benefit of all customers and creditors of BLMIS, not just for "net losers" at the expense of "net winners" and other general creditors.

Although statute requires him to make customers with valid net equity claims whole first, he has also asserted actions for damages against individuals and institutions that participated in, perpetuated, or otherwise supported the Ponzi scheme by their conduct and/or inaction, so that all of those damaged by the fraud may receive some recompense. In performing his duties to the estate under the SIPA statute and the Bankruptcy Code, the Trustee is ensuring that all customers and creditors receive equal treatment under each.

NOTE: Any individuals or entities that filed customer claims prior to July 2, 2009 need not file any additional claim form with the Trustee to be eligible for a general creditor distribution. All properly filed customer claims will be treated as general creditor claims once all of the net equity claimants with allowed claims have been paid from the Customer Fund.