



A Message from the SIPA Trustee's Chief Counsel, David J. Sheehan

Bernard Madoff's unprecedented fraud stretched far and wide. Our recovery efforts and lawsuits are not only taking place here in the United States; our work extends around the globe, including Austria, England, France, Gibraltar, Italy, Liechtenstein, Luxembourg, Spain, and the Caribbean.

With so many actions and jurisdictions involved, this liquidation is one of the most complex recovery efforts ever undertaken. Thousands of parties are involved, and probably a comparable number of reporters, bloggers and assorted commentators are covering Madoff-related news worldwide. Given the number of participants in this unfolding story with differing agendas, it is not surprising that some of the public statements and coverage are misleading or incorrect.

With that in mind, I will use this column, today and in the future, to clarify and comment on key issues. In this message, I'd like to address two important topics that have gotten a great deal of media attention.

First and foremost, I want to emphasize that every penny of the more than \$9.1 billion recovered thus far through our efforts will ultimately be distributed to BLMIS customers with allowed claims. The professional fees of the SIPA Trustee, Irving H. Picard, and those of his counsel are not paid for by any of the funds recovered for the BLMIS Customer Fund – all fees and expenses incurred by the SIPA Trustee and his counsel in pursuit of recoveries are paid for out of a fund maintained by the Securities Investor Protection Corporation. Any assertion to the contrary is just plain wrong.

Second, I'd like to provide a brief overview of the status of the appellate process that affects the timing of payouts from the Customer Fund. On December 17, 2010, the SIPA Trustee and the United States Attorney's Office for the Southern District of New York announced a historic settlement with the estate of Jeffrey Picower in the amount of \$7.2 billion. Of that amount, \$5 billion was recovered by the Trustee while the remainder was forfeiture to the U.S. government. It is undisputed that this entire amount constituted fictitious profits – other people's money – which rightfully belongs to the BLMIS customers who have, in the aggregate, filed claims for the more than \$17 billion in principal which they lost.

Almost a year and a half later, the Picower settlement remains under appeal. As a result, billions of dollars that would be available for distribution to victims who never got their money back are being held up. When the appeals are finally resolved, the \$5 billion will become available for allocation to the Customer Fund.

Even when that happens, however, the SIPA Trustee would only be able to distribute approximately 12 percent of the recovered funds due to the outstanding appeal of the net equity issue. The Second Circuit Court of Appeals recently upheld the decision of Judge Burton R. Lifland of the United States Bankruptcy Court for the Southern District of New York, which affirmed the Trustee's determination that in this liquidation, allowable customer claims, or "net equity" claims, are governed by the Net Investment Method – a "money in, money out" calculation formula. This means that those BLMIS customers who withdrew little or none of their principal are given a priority in distributions from the Customer Fund. Several parties

sought to have the Second Circuit reconsider its opinion, but that request was denied. Currently there is an effort by appellants to have the ruling reviewed by the United States Supreme Court.

We believe that these appeals are without merit. Until they are finally concluded, however, the appeals inevitably delay the return of stolen funds to BLMIS customers. We will continue to do all we can to accelerate the process, clear the path and distribute funds as quickly as possible.

The SIPA Trustee's primary goal is to make customers who have not yet received back all the funds they deposited into BLMIS whole. To that end, the SIPA Trustee and his counsel will continue to vigorously pursue all lawsuits, first, to fill the Customer Fund for the benefit of those customers who did not get their initial deposits back, and second, to create a General Estate in which all victims of Mr. Madoff's fraud may share, excepting those who are found to have acted in bad faith.

To date, more than \$1.1 billion has been returned to allowed claimants. While this may seem like a small step in the total recovery effort, it is just the beginning. We want to assure all of the victims of Mr. Madoff's fraud that we will continue in our efforts to recover the maximum amount of funds possible, so that all victims may receive some recompense for the harms they suffered.

David J. Sheehan
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