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

November 27, 2013 – Recently, the Special Master of the Department of Justice's Madoff Victim Fund (MVF), Richard C. Breeden, announced his approach to the distribution of forfeited monies to certain victims of Madoff's Ponzi scheme. The MVF currently holds approximately $2.35 billion of forfeitures that have been obtained by the United States Attorney's Office for the Southern District of New York in cases related to the Ponzi scheme operated through Bernard L. Madoff Investment Securities LLC (BLMIS).

The MVF is separate from the $9.508 billion that has been recovered to date by the Securities Investor Protection Act (SIPA) Trustee Irving Picard. Because the liquidation of BLMIS is a SIPA liquidation, the SIPA Trustee's approach to the distribution of recovered monies is governed by the Securities Investor Protection Act and the Bankruptcy Code.

To date, the SIPA Trustee has distributed approximately 42.86 percent from the BLMIS Customer Fund, for a total of $4.833 billion returned to BLMIS customers with allowed claims. This is in addition to the approximately $811 million in cash advances SIPC has committed to speed financial relief to BLMIS customers with allowed claims. Further distributions will occur upon the resolution of certain pending legal disputes as well as upon the resolution of the SIPA Trustee's lawsuits. Since the start of the claims process in January 2009, the SIPA Trustee and the Securities Investor Protection Corporation (SIPC) have collaborated to return recoveries to BLMIS customers with allowed claims as quickly as possible, without one penny of associated costs coming out of these resources.

As outlined by Mr. Breeden, the Special Master's distribution approach differs in some ways from the approach mandated by SIPA, and these differences have raised a number of questions. In this letter, we will address questions surrounding distributions in the SIPA liquidation of BLMIS to "indirect" investors, a large group of individuals and entities who invested in "feeder funds," which in turn funneled money to BLMIS. We hope the following brings clarity to this matter and the extraordinary steps the SIPA Trustee is taking to ensure recoveries are distributed to indirect investors in this unprecedented liquidation.

At the outset, we want to emphasize that the end goal of both the Special Master's and the SIPA Trustee's distributions is the same: to return principal lost in the fraud, as calculated by the net investment method, to its rightful owners in the most timely and efficient manner possible.

Based on reports regarding how the MVF will be administered, the Special Master intends to distribute recoveries based on net losses, or cash in versus cash out, both to those who invested directly in BLMIS and also to those who invested indirectly, through vehicles such as feeder funds, investment partnerships or family trusts. The Special Master does not expect to distribute recoveries to the feeder funds or other vehicles of the indirect investors; the only way a feeder fund is eligible to receive a payment from the MVF is if it invested its own money in BLMIS.

The Special Master correctly notes that this is different from the method used in the BLMIS liquidation. Basing his approach on SIPA, the SIPA Trustee makes distributions to allowed claimants who were *actual customers* of BLMIS – who had entrusted principal deposits with BLMIS – as of the December 11, 2008 filing date for the SIPA proceeding. This approach was affirmed by the Second Circuit Court of Appeals.

However, this does not mean that the individual, indirect investors in their respective feeder funds do not benefit from the SIPA Trustee's distributions. In fact, in situations where the SIPA Trustee has approved a feeder fund's claims, he has taken extensive steps to ensure that the money received by the feeder fund is distributed to its investors.

For example, the SIPA Trustee approved the claims of certain of the Tremont-managed funds (Tremont) in the approximate amount of $2.9 billion, after Tremont settled with the SIPA Trustee. And to date, the SIPA Trustee has distributed from the BLMIS Customer Fund to Tremont 42.86 percent of their allowed claims, totaling more than $1.2 billion.

(Due to a class action suit filed on behalf of Tremont investors, the approximately $1.2 billion from the BLMIS Customer Fund went to an escrow agent. Ultimately the distributions of the funds will be overseen by United States District Court Judge Griesa as part of the class action. The class action settlement is currently under review by the Second Circuit Court of Appeals.)

Once the class action settlement is resolved, the individual investors in Tremont will receive their shares of the $1.2 billion distribution from the SIPA Trustee. In addition, the SIPA Trustee structured the settlement with Tremont so that each time an additional BLMIS Customer Fund distribution is made, Tremont's pro rata share of the distribution will go to Tremont's individual investors pursuant to Judge Griesa's orders.

Moreover, to ensure that Tremont investors receive the maximum benefit from the SIPA Trustee's recovery efforts, the settlement agreement with Tremont specifically provides that none of the SIPA Trustee's distributions can be paid to Tremont management for any purpose. This model has been and will be followed in future settlements with other feeder funds.

The SIPA Trustee's approach is the approved avenue under SIPA, which has enabled the unprecedented recoveries and distributions in the BLMIS liquidation to date. BLMIS did not maintain – nor would it have any reason to maintain – records of either the identity of investors in various BLMIS feeder funds or, more importantly, the amounts invested by each feeder fund investor. Those records are likely maintained by the feeder funds, with which the investors have a legal relationship, and may show the identity of the customers and the amounts they are owed on a cash in-cash out basis.

The settlement with Tremont is just one example of the many nuanced and varied recovery and settlement agreements the SIPA Trustee has negotiated that involve indirect investors. Other instances have included small or family investment groups, LLCs and many others. Each situation is different. The SIPA Trustee evaluates the unique circumstances of each case and structures agreements to ensure that recoveries are passed through to the rightful owners appropriately.

Though the approaches by the SIPA Trustee and the Special Master may differ, the ultimate goal is the same: to return stolen monies to their rightful owners as quickly as possible. We hope this posting clarifies the differences between the distribution processes and we will provide further clarifications if the need arises.