

ENTWISTLE & CAPPUCCI

Bernard L. Madoff Investment Securities LLC First Meeting of Creditors

On Friday, February 20, 2009, Irving H. Picard, the Court-appointed trustee (“Trustee”) for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) presided over the First Meeting of BLMIS Creditors. During the meeting, the Trustee and David Sheehan, a lawyer on the Trustee’s staff, discussed the status of the Trustee’s investigation, the recoveries to date, and information regarding the claims process for defrauded investors. Although we do not necessarily agree with certain positions taken by the Trustee, we provide this summary for informational purposes.

Trustee’s Investigation and Recoveries To Date

The Trustee has been pouring over the many thousands of pages of documents located at BLMIS’s headquarters and an offsite warehouse. The Trustee believes that Bernard L. Madoff (“Madoff”) did not purchase any securities for those investing with BLMIS for at least the past thirteen years.

The Trustee is in the process of locating BLMIS assets and monetizing them. He is examining everything from BLMIS investment accounts to the artwork found on the walls. BLMIS’s market-making business is legitimate, and the Trustee intends to auction it off in the next few weeks. The Trustee is also looking closely at the personal assets of Madoff, his family members, and other BLMIS insiders. Due to the current criminal investigations, recoveries from these individuals will be somewhat delayed.

The Trustee has recovered approximately \$950 million in assets thus far. The Securities Investor Protection Corporation (“SIPC”) is paying for administrative costs in connection with these recoveries (*e.g.*, legal fees, consulting fees, *etc.*). As a result, all recoveries will directly benefit BLMIS creditors.

Claims Process

The Trustee has received 2,350 claims for a total of approximately \$1 billion. The Trustee anticipates that SIPC will start sending out claims determination letters for some of these claims in the next couple of weeks. Claims will be processed on a rolling basis, with the intent being to pay people as soon as possible. The Trustee made clear that the March 4, 2009 initial filing date will have no legal significance here, and that the real bar date for claims is July 2, 2009. Nonetheless, investors are encouraged to file early so that they may receive payment on their claims as soon as possible.

Significantly, SIPC intends to use the \$500,000 securities coverage limit per account (instead of the \$100,000 cash coverage limit) even though BLMIS never purchased the securities that were supposedly in each account.

In determining the amount of the allowable claim, the key number will be what the Trustee calls the investor’s “net equity.” Although we do not necessarily agree, the Trustee

is taking the position that an investors "net equity" will be the sum total of all cash deposits and withdrawals from the account. The Trustee does not, however, intend to count any purported investment gains when determining an investor's net equity. For example, if an investor deposited \$1 million ten years ago and withdrew \$500,000 over the years, the investor will have an allowable claim of \$500,000, notwithstanding any purported investment gains. Consequently, if an investor deposited \$1 million ten years ago, but withdrew \$1.5 million over the years, the investor will have a \$0 claim -- and may in fact be subject to a clawback action.

The Trustee clarified that an investor with an IRA account, a trust account, and a general direct account has three separate accounts. Separate claim forms should be submitted for each. Moreover, the Trustee urged all indirect investors, such as those who invested in BLMIS through various feeder funds, to file SIPC claims. SIPC has not yet made a decision on whether it will cover such claims, but investors can protect their rights by filing a claim prior to the July 2, 2009 bar date.

Clawbacks

The Trustee was not specific regarding how it would evaluate clawback issues other than to say that determinations would be made on a case-by-case basis. The Trustee currently intends to pursue the recovery of money taken out that exceeds the principal invested and not seek the clawback of principal payments. The Trustee claimed that each case would be viewed with compassion and that he might not seek recovery of "insignificant" transfers. That said, the Trustee expects clawback suits to be filed in the near future.

For further information, please contact:

Andrew J. Entwistle, Esq.
Entwistle & Cappucci LLP
280 Park Avenue
26th Floor West
New York, New York 10017
Telephone: (212) 894-7200
aentwistle@entwistle-law.com