For the Record – June 1, 2012

Attributable to Amanda Remus, Public Relations Liaison for the SIPA Trustee & Counsel

The Madoff Recovery Initiative was the subject of a recent "Dealbook" column by Andrew Ross Sorkin in *The New York Times*. While we have nothing but the highest regard for both Mr. Sorkin as a financial journalist and *The New York Times*, we feel that Mr. Sorkin may not have had all of the facts. What is clear from the column – which discusses the success of the SIPA Trustee's recoveries to date, the legal strategy set forth by his counsel, led by David Sheehan, and professional fees incurred for more than three-and-a-half years of hard work on the part of the SIPA Trustee and his team – is that sufficient information may not have been available to Mr. Sorkin and, as a result, important facts were missed as he prepared his piece.

In fairness to Mr. Sorkin and to the public, we would like to provide here the additional information and context regarding the matters discussed in the *NYT* "Dealbook" column, to help complete the record.

Distributions and Settlement Agreements

The *NYT* "Dealbook" column acknowledges that Irving H. Picard, SIPA Trustee for the liquidation of Bernard L. Madoff Investment Securities LLC, has recovered or reached agreements to collect more than $9 billion to date, equivalent to $7 million a day for BLMIS customers since his appointment in December of 2008.

However, the column says that, of the $9 billion recovered, Madoff victims have received "only $330 million." This statement is only partially true, as it doesn't include more than $800 million in SIPC advances that Mr. Picard, as SIPA Trustee, has requested and approved for distribution to BLMIS customers with allowed claims. As a result, these customers have received more than $1.1 billion in total.

The column commentary included additional uncertainty about whether or not all of the Customer Fund recoveries would eventually reach the customers. We'd like to re-affirm that

every penny of recoveries for the Customer Fund will be distributed to BLMIS customers with allowed claims.

The column implies that one reason Customer Fund monies might not reach customers is that some of the settlement deals reached by the SIPA Trustee might fall through on appeal. While these appeals have unfortunately delayed distributions, none so far have been overturned and there is no reason to believe they will be.

For example, in March 2012, the Honorable John G. Koeltl of the United States District Court for the Southern District of New York entered an order upholding the SIPA Trustee's $5 billion settlement with the estate of Jeffry Picower. In the Order, Judge Koeltl said: "The Bankruptcy Court was correct in approving the settlement with the Picower defendants that was extraordinarily beneficial to the BLMIS estate, and in enjoining claims against the Picower defendants duplicative of those brought by or which could have been brought by the Trustee."

In fact, the truth behind the delay in additional distributions from the Customer Fund is simple: the appeals of two claimants, represented by several class-action lawyers (one of whom was quoted by Mr. Sorkin) are responsible for holding up the distribution of more than $5 billion – or more than 55 percent – of the approximately $9.1 billion in recoveries.

We are fighting to resolve these appeals. Once the courts' rulings become final, the path will be cleared for additional distributions. We'd like to note here that the SIPA Trustee is hopeful that another significant distribution will be possible this year. Please continue to look for updates on this website: www.madofftrustee.com.

Fees and Public Interest Discount

The *NYT* "Dealbook" column also addresses legal fees associated with the case. As stated in the last fee application filed by the SIPA Trustee on February 17, 2012, the average hourly discounted rate for Baker Hostetler attorneys working on the Recovery Initiative – including the SIPA Trustee – is $432.93 per hour.

In addition, since the inception of this case, the SIPA Trustee and Baker Hostetler have applied a public interest discount across the board, reducing their standard billing rates by 10 percent. Combined with other fee and expense adjustments, the result is a total voluntary reduction of approximately $35 million in compensation since the SIPA Trustee and his Counsel launched their efforts over 40 months ago.

The fees charged by the SIPA Trustee and Baker Hostetler are approximately $273 million; the difference between that and the higher number cited in the *NYT* "Dealbook" article is the nearly three-and-a-half years of compensation to other consultants – like the claims agents, the forensic accountants and the international special counsel to the SIPA Trustee and vendors – all of whom are critical to helping the SIPA Trustee unwind the decades-long fraud perpetrated by Madoff and those who aided and abetted him.

Uncovering the machinery of the fraud and its players has required the review of millions of BLMIS documents and decades of fraudulent accounting and fabricated customer statements, intricate investigations across the globe, and the preparation of court documents on complex questions of fact and law.

Time and again, the fees requested for the BLMIS liquidation have been determined by the courts to be reasonable and fair based on the customary compensation charged by comparably skilled practitioners in bankruptcy matters as well as non-bankruptcy cases in the competitive national legal market. All of the facts associated with the applications for interim compensation are presented to the Bankruptcy Court and can be read in publicly available transcripts and in the filings themselves.

In addition, the U.S. Government Accountability Office (GAO), which examined the efforts of the SIPA Trustee in the Madoff liquidation this spring and was referenced in Mr. Sorkin's column, also found the fees to be reasonable. Here's what the GAO said: "The currently estimated total costs of the Madoff liquidation, as a percentage of current recoveries, are within the range of costs incurred in previous SIPC cases."

Most important, as the column correctly notes, all of the fees and expenses are reimbursed by SIPC; none of it comes out of the more than $9.1 billion in recoveries achieved through settlements and litigation to date. In short, significant amounts are being recovered for customers at no cost to them.

Litigation

The *NYT* "Dealbook" column also states that a number of Mr. Picard's legal initiatives – against HSBC, JPMorgan Chase, UBS, UniCredit, among others – seeking upwards of $90 billion in additional recoveries and damages for the Madoff Customer Fund – have been rejected by the courts. The information here is, again, not complete. The SIPA Trustee is appealing all of these rulings and many of the SIPA Trustee's lawsuits seeking billions of dollars have already been returned by the District Court to the Bankruptcy Court for litigation.

When the overall legal strategy of the SIPA Trustee is questioned in the *NYT* "Dealbook" column, it is important to remember that the legal mandate of the SIPA Trustee is to pursue every viable avenue to ensure a maximum recovery.

The Madoff Recovery Initiative is a global effort, spanning more than 30 international jurisdictions. The Madoff Ponzi fraud lasted decades. Our progress in less than four years has been remarkable, considering the time span and geographical scope of the fraud. The SIPA Trustee and his team have already achieved much success in this effort, both in terms of dollar value and percentage of stolen funds recovered. We will continue to be unrelenting in our efforts to build the BLMIS Customer Fund.

For the Record – May 25, 2012

Attributable to Amanda Remus, Public Relations Liaison for the SIPA Trustee & Counsel

The complex global legal actions undertaken by the SIPA Trustee and the bankruptcy laws applicable to those actions are critical to the BLMIS Recovery Initiative. These important topics are sometimes misunderstood, misinterpreted or misrepresented in the press. To assure that correct and up-to-date information regarding the work of the SIPA Trustee and the recoveries he has achieved is available to the public, we will, from time to time, address and clarify inaccurate or incomplete press coverage and commentary in this new website feature, For the Record.

Distributions from the Customer Fund

It was recently reported that the SIPA Trustee had arbitrarily decided to delay distribution of recovered funds. The coverage implied that there are additional funds that could be distributed now.

It is the intention of the SIPA Trustee to distribute recoveries from the BLMIS Customer Fund as quickly as possible. That desire, however, has been frustrated by ongoing litigation and appeals. The SIPA Trustee has recovered or entered into settlement agreements to recover more than $9.1 billion for the Customer Fund. All of these settlements have been approved by the Bankruptcy Court as appropriate and reasonable. Some of these settlements have been affirmed on appeal, but still further appeals have been taken to either the United States District Court or to the Second Circuit Court of Appeals. While the SIPA Trustee is confident that the appeals on these settlements will fail, as they already have on several occasions, until these appeals are resolved, the SIPA Trustee cannot distribute those funds.

The SIPA Trustee's confidence in the ultimate outcome of these appeals is based on the following facts: Of 16,500 claimants, only two objections were filed to the Picower settlement, only one objection was filed to the settlement with the family of Norman F. Levy and only one objection was filed to the Tremont settlement. The Picower and Levy Family settlements have already been approved by both the United States Bankruptcy Court and the District Court for the Southern District of New York.

As for the settlement with Tremont, which was approved by the Bankruptcy Court on September 22, 2011, the SIPA Trustee has made a motion to dismiss that appeal as lacking foundation. That motion will be heard by the District Court on May 29, 2012. Hopefully, a ruling affirming the settlement will be forthcoming and there will be no further appeal on that decision.

In addition, although the SIPA Trustee's definition of net equity has been upheld by both the Bankruptcy Court and the Second Circuit Court of Appeals, certain parties have petitioned the United States Supreme Court to review the Second Circuit's decision. These petitions are still pending review as of May 2012. If the petitions are denied, the SIPA Trustee expects to be in a position to make a second interim distribution to allowed claimants. Updates on future distributions will be posted on the SIPA Trustee's website.

It is essential to remember that the SIPA Trustee is bound by any final decision related to the appeals, and therefore would have to calculate pro rata distributions to reflect any possible decision. Thus, while appeals remain open, the timing and amount of pro rata distributions from the Customer Fund must accommodate all potential outcomes.

Current Litigation

The litigation brought by the SIPA Trustee is complex and varied, a reflection of the intricate, global Madoff Ponzi scheme itself. The basic reason behind these legal actions is often overlooked: while Bernard Madoff portrayed BLMIS as an investment advisory firm, Madoff was simply taking one person's money and giving it to somebody else. The lawsuits brought by the SIPA Trustee are designed to return the money to the Customer Fund for those claimants who did not receive all of their deposited funds back. In addition, the lawsuits seek to hold those that either enabled or perpetuated Madoff's scheme accountable for their participation in the harm caused by the fraud.

Over the last year, there have been a number of decisions in the Madoff litigation by the District Court. It would be inappropriate to discuss them here because they are either the subject of appeals to the Second Circuit or are otherwise being actively litigated in both the Bankruptcy

Court and the District Court. In the end, the SIPA Trustee hopes to recover all of the money that was fraudulently transferred in Mr. Madoff's fraud for those parties who filed claims– approximately $17.3 billion. However, this number is not a fixed amount for several reasons.

As the SIPA Trustee settles cases, in some instances, the settling party is a customer who did not get all of his money back. When they settle, these defendants are sometimes paying principal back to the Customer Fund – if, for example, they withdrew principal as part of a preferential transfer – so that money can be then distributed equitably among all customers. In those situations, the settling customer's claim will be allowed and will increase by some or all of the amounts repaid to the Customer Fund.

An easier way to think of it may be like this: When BLMIS failed, some people came out ahead of others in that they had already received their principal back. Others had not. Thus, in order to make all customers equal, the SIPA Trustee needs to recover at least $17.3 billion, which is the amount of principal those customers lost.

The SIPA Trustee's legal strategy has – to date – secured court approval of settlements of more than $9.1 billion, subject to certain appeals. We are more than halfway home. The SIPA Trustee is going to proceed with the litigation as directed by the courts in the hope of reaching – and surpassing – that goal.

Fees and Expenses

Another topic that is widely misunderstood and misreported in the media is the fees and expenses of the SIPA Trustee. As the SIPA Trustee has stated on many occasions, not one penny of recovered customer money is used to pay any of the legal fees and expenses incurred by the SIPA Trustee. These fees and expenses are all paid from the fund overseen by SIPC in accordance with the provisions of the SIPA statute.

The SIPC fund consists of monies paid into the fund by broker-dealers. All broker-dealers who are registered with the SEC are members of SIPC. The SIPA statute is designed to maximize the return of a customer's net equity by having SIPC pay all of the expenses and fees so that none of

those costs come at the expense of customers, who are given the first priority under the SIPA statute.

It is also important to remember that the fraud confronting the SIPA Trustee is probably the most complex and far reaching in history, stretching over several decades and throughout the global financial community. Billions of dollars are at stake, as reflected in the recoveries and settlements achieved to date. Equally complex are the lawsuits that must be brought to recover customer property. No one with knowledge of the fraudulent enterprise was available to assist the SIPA Trustee in this effort. Also, working against the SIPA Trustee is a large contingent of law firms and accountants seeking to deny the SIPA Trustee the ability to recover these funds from their clients. The SIPA Trustee therefore had to assemble a team that is equipped to take on these tasks and see them to their conclusion.

This endeavor requires a strong, aggressive legal effort. To date, however, that effort has produced significant results for the customers injured by Madoff's fraud. Based on what the SIPA Trustee has achieved (for example, recovering funds at the rate of approximately $7.5 million dollars a day), the SIPA Trustee's fees and expenses have been found to be fair and reasonable under all of these circumstances by SIPC, the United States Bankruptcy Court, and when challenged on appeal, the District Court.

The $64 Billion Question

We would like to address one more topic in this *For the Record.* At the beginning of the Madoff Recovery Initiative, it was widely reported that the Madoff fraud totaled approximately $65 billion in losses. That figure was the aggregate value shown on the final BLMIS customer statements, dated November 30, 2008. Because none of the BLMIS statements reflected real securities holdings or trading activity, however, the amounts shown on those statements are nothing but fiction.

Many claimants filed claims using their last statement amounts. The figures shown on the last statements add up to the fictitious number of approximately $65 billion. Since May 2011, the SIPA Trustee has been reporting that this amount has been reduced to approximately $57 billion.

The reasons for this are manifold. Some customers with accounts did not file claims by the July 2, 2009 statutory bar date. Further reductions occurred in connection with settlements with the estate of Jeffry Picower, the Norman F. Levy Family, Fairfield Sentry, and others. These and other settlements required the irrevocable withdrawal of those customer claims, resulting in an increase in recoveries for the Customer Fund and a reduction in the amount of claims against the estate.

These reductions have a significant impact on the net equity calculation. So long as the last statement method for calculating net equity is on appeal, all distributions by the SIPA Trustee must take into account the fact that he may have to at some point distribute the amount claimed on the last statement. However, because the claims of certain parties have been disallowed through settlement or were not timely filed, the SIPA Trustee does not have to reserve funds for them. Accordingly, he reduced the amount claimed from his calculation of the reserve so that the initial distribution could be greater to those with allowed claims.

It is important to note that neither the approximately $65 billion nor the $57 billion amounts, respectively, are in any way related to the SIPA Trustee's projected recoveries, as has been erroneously reported.

We hope you find these clarifications and explanations helpful. If you have additional questions, please check elsewhere on this website for FAQs and other resources designed to answer questions about the Madoff Recovery Initiative. Members of the media should contact me, Amanda Remus, Public Relations Liaison for the SIPA Trustee & Counsel, at madofftrustee@bakerlaw.com.