



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

**August 30, 2017** - The overriding goal of this liquidation is to return principal lost in the Madoff Ponzi fraud to its rightful owners in the timeliest manner possible. The rightful owners include both “direct” Madoff customers (those who had accounts with the Madoff firm) and “indirect” customers (those who invested in BLMIS through third parties).

Over the past eight years, the SIPA Trustee and his global legal teams have recovered or reached agreements to recover more than \$12.0 billion, and more than \$10.2 billion has been distributed to victims of the Madoff Ponzi scheme.

The indirect investors represent a significant group of Madoff victims, with approximately 69 percent of the losses associated with feeder fund accounts. Getting recoveries returned to indirect Madoff investors is much more complex than returns to the direct investors. We have had a great deal of success, nevertheless, in safeguarding the interests of indirect Madoff investors and restoring stolen funds to them. In this letter, I'd like to update you on our approach and recent activities in that area.

In the beginning of the case, we moved as quickly as possible to evaluate more than 16,000 claims filed with the SIPA Trustee. The losses incurred by Madoff customers with BLMIS accounts in their own names were relatively straightforward to determine because the SIPA Trustee and his team had access to BLMIS's books and records showing their investment histories with BLMIS.

Losses incurred by those who invested indirectly in BLMIS – in vehicles such as feeder funds – posed more difficulties. This is because the information regarding identity, the amounts invested, and whether that investor is a “net loser” or “net winner” was maintained by the feeder fund (or other investment entity), not the SIPA Trustee. In other words, the SIPA Trustee could not know who those investors are or how much they have lost.

That limitation does not mean that indirect investors are out of luck. Our court-approved approach has been to consider the feeder fund or other third party as the customer of record, while creating safeguards for the indirect investors to ensure that they share in the distributions to the fullest extent possible. Specifically, as the feeder funds and other third parties settle their litigations with the SIPA Trustee and begin receiving distributions, the settlement agreements provide that they expedite reimbursements to their investors. In some cases, the terms of the settlement preclude managers of the funds from participating in recoveries to ensure that the maximum amount is returned to the investors.

Is our approach working? Yes, and a recent court ruling is the latest example.

Tremont Group Holdings, Inc. and its affiliates (“Tremont”) had more than a dozen feeder funds with five BLMIS accounts. The SIPA Trustee settled with Tremont in September 2011, allowing its claim for \$3 billion. To date, Tremont has received \$1.8 billion from the SIPA Trustee.

Tremont was sued by its investors in a federal class action. In 2015, a district court approved a Plan of Allocation, which distinguished between the “net loser” and “net winner” feeder funds of Tremont. Each fund’s investors were to receive a pro rata share of the recoveries according to the investors’ net equity (i.e., amount lost) in that fund. The investors in the “net loser” funds received distributions. Investors in the “net winner” funds, by contrast, contributed to the settlement.

Investors in the “net winner” funds appealed this arrangement, but failed to overturn the Plan of Allocation. The Second Circuit, in affirming the district court’s Plan of Allocation, noted that “the [Plan of Allocation] adopts the net equity principle of allocation that this Court has previously endorsed with respect to Madoff’s Ponzi scheme. This principle holds that, because net winners were given money stolen from net losers, only net losers have an equitable right to recovery.” This ruling paves the way for Tremont’s indirect investors to share in the SIPA Trustee’s distributions.

As the Tremont settlement demonstrates, even though indirect investors are not “customers” according to strict legal definition, they are still Madoff victims and still benefit from the SIPA Trustee’s distributions.

Other examples include the Ariel Fund Limited and Gabriel Capital L.P., which received initial distributions of approximately \$179.5 million in 2015 shortly after settling with the SIPA Trustee, which were distributed to their investors. These funds have also received subsequent distributions that, in turn, were restored to their investors. These are just but a few examples of the SIPA Trustee’s commitment to all Madoff victims, be they among the “direct” customers in BLMIS or the “indirect” investors who invested with Madoff through third parties.

Fairness to all remains our goal.

David J. Sheehan  
August 30, 2017