

March 8, 2011, 3:00 p.m. EST

THE MADOFF RECOVERY EFFORT:
AN UPDATE CALL WITH THE TRUSTEE AND HIS COUNSEL
FROM BAKER HOSTETLER

- **Opening remarks (Irving Picard)**

Good afternoon and welcome to what we hope will be the first of a series of media briefings on the Madoff recovery effort.

Our goal for today's call is to update and inform you on our activities, explain general legal issues, clarify and correct misinformation, and, of course, answer your questions.

We will not discuss or comment on specific cases or strategies related to pending and ongoing litigation. David and I have prepared remarks, after which we will take questions.

For more than 20 years, Bernard Madoff stole money from some people and gave it to others – including himself – to create and perpetuate a fraud.

Bernard Madoff made no investments on behalf of his customers. The statements he sent to his customers were complete fabrications, and any gains shown on those statements were phantom.

Bernard L. Madoff Investment Securities was nothing more than a massive Ponzi scheme. I'm emphasizing this statement up front today because this basic fact seems to have gotten lost in the public rhetoric.

The fraud – and with it, Bernard L. Madoff Investment Securities – collapsed in December 2008 and I was appointed the SIPA Trustee for the BLMIS liquidation. This is a SIPA liquidation because BLMIS – a brokerage firm – failed.

The Trustee's mission is twofold. First, we seek to marshal stolen assets and to assemble the largest fund possible for the benefit of BLMIS customers and creditors. Net losers will be paid – or made whole – first. After that, BLMIS creditors and customers with fraud and damage claims will be entitled to receive a distribution from any surplus in the Customer Fund.

As David said at the January hearing on the Picower settlement, and repeated last week before the Second Circuit, I am Trustee for all customers of BLMIS. That is true whether or not we have allowed – meaning “approved” – a customer's claim, or whether or not a customer is a “net winner” or “net loser.” I represent the interests of all BLMIS customers as well as creditors.

Before updating you on our progress with customer recoveries, I want to briefly outline how SIPC advances supplement the return of customer funds.

The Customer Fund we are assembling will ultimately be distributed to BLMIS customers, and possibly, to its creditors. While we hope to initiate distributions in the near future, it will take some time before we can distribute all the funds, as we work to recover stolen property and resolve legal challenges.

This is where the SIPC advance comes in. The purpose of the SIPC advance is to get funds to customers as early as possible in the liquidation proceeding. They do not have to wait for a distribution until after we settle all legal challenges.

Before we can make any distributions from the Customer Fund, SIPC can advance to the Trustee up to \$500,000 for each customer whose claim has been allowed.

SIPC can only make advances for allowed claims. Customers whose claims have not yet been allowed cannot receive a SIPC advance, unless or until their claims are allowed. The SIPC advance works in tandem with the satisfaction of allowed customer claims.

There is just one fund – the Customer Fund – from which distributions will ultimately be made.

The SIPC advances are just that ... advances on payments that will be made from the Customer Fund. It is not an insurance payment. It is not a separate pot of reimbursement funds. It is an advance.

Now, regarding the Customer Fund, I am pleased to report that we have accomplished much in the past two years. This is an unprecedented undertaking, and our team at Baker, led by David, is exceptional.

Overall, we have developed and launched an aggressive, global recovery effort. It has already yielded great success, and we have laid comprehensive groundwork that I hope will lead to significant future recoveries. Today, approximately \$2.6 billion in cash and cash equivalents have been recovered for the Customer Fund.

An additional \$5 billion will be added to the Customer Fund from the settlement with the estate of Jeffrey Picower. At the moment, unfortunately, those funds are not available to us due to an appeal and an objection to the \$2.2 billion forfeiture obtained by the U. S. Attorney's office. We anticipate that our position will ultimately prevail.

When you combine our recoveries with what we understand to be nearly \$2.5 billion of forfeited funds in the possession of the U. S. Attorney's office, about \$10 billion, or approximately one-half of the monies that we estimate were stolen in the Madoff fraud and remain unpaid, have been recovered.

That \$10 billion is an average recovery of about \$12 million a day since the commencement of this proceeding. And we are far from done.

We have filed more than 1,000 lawsuits globally, which, in the aggregate, seek to recover approximately \$100 billion. Details regarding a number of these legal actions can be found on the Trustee's website.

It is difficult to predict exactly how much we will ultimately recover. We hope it will be a majority of what we are seeking.

As I have always said, our preference is to negotiate and reach a resolution rather than litigate. This is especially true with individual customers of BLMIS who withdrew more than they deposited and have received or will receive legal complaints seeking the return of those excess funds.

We understand that some of these individual customers – the so-called “net winners” – have extenuating circumstances, and that returning all the excess funds which they withdrew may represent a hardship. Many are unable to return any funds at all.

I have broad discretion to consider individual situations and address these through our Hardship Program. We did not file complaints against more than 200 customers who had previously qualified for the Hardship Program and who had presented their individual circumstances to us before we began filing complaints.

Since November, we have received approximately 95 hardship applications. We have already dismissed a number of actions that were filed. More applications are currently under consideration. I expect that we will dismiss a significant number of additional actions.

The Hardship Program is working well, and could help many others, but only if they come forward. We have made every effort to demonstrate compassion while maintaining our responsibility under the law. We will continue to do so.

We have also made substantial progress in processing the approximately 16,500 claims that have been filed for customer protection under SIPA. We have already reviewed and determined the status of approximately 98.5 percent of those claims.

Of those claims, more than 10,700 have been denied outright. These are chiefly claims filed by persons who did not have accounts in their names – claimants primarily invested in BLMIS indirectly through feeder funds.

The issue of whether they should be treated as customers was argued last October, and we are waiting for the court's decision. In my view, only those who invested directly with BLMIS are eligible for customer treatment.

We have allowed more than 2,400 claims – for approximately \$6.86 billion. SIPC has committed approximately \$793.4 million dollars in advances to pay those claimants. More than 2,700 additional claims have been denied, primarily because the claimants have previously received more than they deposited.

About 4,700 objections to the Trustee's various determinations have been filed. In addition to the feeder fund-related accounts and the net equity issue, there are numerous other issues which will need to be resolved. These deal, for example, with whether an account holder is entitled to interest, the time value of money, constant dollar appreciation or some other metric.

Then there are questions like whether joint account holders are entitled to more than one customer protection payment, whether there should be adjustments for taxes paid, and challenges to our calculations of withdrawals and transfers. The court will resolve these issues over time, but I think they give you a good sense of the complexity of the situation.

Approximately 265 claims – including those from feeder funds – are involved in pending litigation and may eventually be allowed. This could occur once certain conditions regarding preferential transfers or other issues are resolved. Those claims that may be allowed are significant and total between \$11 billion and \$12 billion.

I would note that as such parties pay, whether by settlement or judgment, they may be able to add such amounts to their claims.

What this all means is that both the number and dollar amount of allowed claims could rise in the coming months. I stress this because there is a misunderstanding that the monies recovered so far will satisfy all the allowed claims.

Given the size and scope of the Madoff Ponzi scheme, I believe we have made extraordinary progress in a relatively short period. David will now make some remarks.

- **Opening remarks (David Sheehan)**

Thank you, Irving. Our priority now is to continue our global efforts to recover stolen assets through negotiations and litigation if necessary. We will announce major recoveries as they happen and the Trustee's website will update results regularly.

I want to take a few minutes now to review the net equity issue and the recoveries that BLMIS customers are entitled to receive. While many of you heard me argue this in court last week, it is worth reiterating. "Net equity" is the determination of how much each BLMIS customer gained or lost through the Madoff Ponzi scheme.

As Irving said, any withdrawal over and above original principal was actually a transfer of funds from other BLMIS customers' accounts. That's why we are looking at all the net winners and determining who can – and should – return excess monies to the customer fund. Those who didn't get their money back are entitled to get it from those who have it.

This approach is far from new. The "net equity" definition is based on decades of legal precedent and, in the Madoff case, has already been upheld by the bankruptcy court.

However, as you are aware, certain parties are contesting this longstanding legal precedent by claiming that BLMIS customers are entitled to full restitution of the amounts shown on the November 2008 statements. These parties are claiming that the BLMIS customers should be compensated for fraudulent losses, not actual losses.

There is no precedent or basis in law for either industry or government compensation of fraudulent losses. Only real losses are eligible for compensation programs. Therefore, we believe that these actions – in particular, the appeal of the definition of “net equity” – will not prevail.

What’s been overlooked – in our opinion – is that these actions and appeals, including the appeal of the Picower settlement, are further harming Madoff customers by raising false hopes and, most troubling, by delaying the maximum distribution of customer funds to those who need it now.

Until the appeals have been settled, we can only move ahead with a smaller initial distribution to BLMIS customers. The Trustee will soon submit an application to the court for approval to begin distributing portions of the Customer Fund. We hope to file that application by the end of March 2011, and we expect a hearing to be scheduled in the latter part of April.

Our intention is to make an initial pro-rata distribution to BLMIS customers this year.

I would like to reiterate what has been said here and in court: by definition, the Trustee represents all the customers of BLMIS– not just the net losers. The Trustee is mandated by statute to represent each and every customer and creditor in this case and his goal is to do his best to satisfy them all.

If we are successful in securing the return of funds in excess of total BLMIS deposits, all of the customers – both winners and losers – will become eligible for distributions as general creditors of the estate.

The additional funds to make that happen can only come from the sophisticated investors and major institutions whose greed perpetuated the fraud. If the courts hold them accountable for their behavior, there will be a larger pool to distribute equitably to all who suffered at the hands of Bernard Madoff.