

VII. CLAIMS ADMINISTRATION

A. CUSTOMER CLAIMS

The Claims Processing Order and Notices of the Bar Date.

79. The Trustee sought Court approval for and implemented a customer claims process in accordance with SIPA. As discussed in ¶ 44 above, the Claims Procedures Order approved (i) the form and manner of publication of the notice of the commencement of the liquidation proceeding (the “Notice”) and (ii) specified the procedures for filing, determining and adjudicating customer claims.

80. On January 2, 2009, the Trustee mailed a copy of the Notice and claims filing information to (i) all persons and entities that are or appear from available records to have been a customer of BLMIS at any time, (ii) creditors other than customers or broker-dealers and (iii) broker-dealers who were identified as BLMIS customers based on a review of BLMIS’ books and records. More than 16,000 potential customer, general creditor and broker-dealer claimants were included in the mailing of the Notice. The Trustee published the Notice in all editions of The New York Times, The Wall Street Journal, The Financial Times, USA Today, Jerusalem Post and Ye-diot Achronot by January, 2009. The Trustee also posted claim forms and claims filing information on the Trustee’s website (www.madofftrustee.com) (“Trustee Website”), and SIPC’s website (www.sipc.org) (“SIPC Website”).

81. Under the Claims Procedures Order, claimants were to mail their claims to the Trustee at the following address: Irving H. Picard, Esq., Trustee for Bernard L. Madoff Investment Securities LLC, Claims Processing Center, 2101 Cedar Springs Road, Suite 1100, Dallas, Texas 75201. All customers and creditors were notified of the mandatory statutory bar date for filing of claims under section 78fff-2(a)(3) of SIPA, which was July 2, 2009 (the “Bar Date”). Any claims received after July 2, 2009 are deemed untimely and will not be allowed.

The Notice published in the newspapers, mailed to claimants and posted on the Trustee's and SIPC's websites, stated in boldface that "[n]o claim of any kind will be allowed unless received by the trustee within six (6) months after the date of this Notice." The Instructions for completing the Customer Claim and general creditor claim forms also included that information.

82. On May 21, 2009, the Trustee mailed a reminder notice to customers who had not yet filed a claim that the statutory bar date was July 2, 2009.

83. On June 22, 2009, the Trustee mailed a final bar date reminder notice (the "Final Reminder Notice") to 7,766 known past and present customers of BLMIS from whom a claim had not yet been received. In addition, the Trustee posted the Final Reminder Notice on the Trustee Website. In the Final Reminder Notice, the Trustee acknowledged that certain litigation had been filed regarding the Trustee's definition of "net equity" under SIPA and that this Court's decision on this issue may affect whether or not certain customers have an allowed claim in this proceeding (such litigation is discussed in Section IX.A, *infra*). The Trustee urged all customers to file a claim by the July 2, 2009 in order to ensure that the Trustee considers their claim. The Trustee was concerned that some claimants might mistakenly rely on the litigation and not file claims by July 2, 2009. The mailing of the Final Reminder Notice was unprecedented in SIPA proceedings and represented an extraordinary effort by the Trustee.

84. As noted above, the Bar Date for the filing of claims under section 78fff-2(a)(3) of SIPA was July 2, 2009. By the Bar Date the Trustee had received 16,239 customer claims. Between the Bar Date and October 31, 2009, the Trustee received 67 untimely filed customer claims. The books and records of BLMIS reflect that there were 8,095 non-administrative IA accounts. As of December 11, 2008, 4,903 accounts were active, i.e, either a monthly customer

statement was generated for the account for the period ending November 30, 2008 or the account was opened in December 2008. The Trustee has received multiple claims for many accounts.

Claims Processing.

85. In compliance with the Claims Procedures Order, the Trustee has developed a comprehensive claims administration process for the intake, reconciliation, and resolution of customer claims. The Trustee's dedicated team of professionals including business consultants, forensic accountants, and attorneys work together through the various levels of review a claim must undergo before it can be determined and allowed.

86. At the initial intake stage, AlixPartners, the Trustee's claims agent receives and reviews each filed claim to insure they are filled out properly and all relevant information is included. If any information is missing, the claims agent sends a request for supplemental information. As of October 31 2009, AlixPartners had mailed over 590 requests for supplemental information.

87. In the next stage – the research stage - FTI, the Trustee's forensic accountants, review each claim, information gathered from BLMIS' books and records regarding the account at issue and information submitted directly by the claimant. The results of this review are noted on each account and are ultimately used by the Trustee in assessing his determination of the claim.

88. At the third review stage, the claims are moved to SIPC where a SIPC claims review specialist provides a recommendation to the Trustee regarding how each claim should be determined. Once a recommendation has been made by a SIPC reviewer, the Trustee and his counsel then review the recommendation and legal or other issues that have been raised in prior review stages. Once the Trustee has decided upon a resolution of a claim, the Trustee issues a determination letter to the claimant.

89. The Trustee has or will mail a determination letter to every claimant when their claim is determined. The determination letter explains how the customer's claim has been determined by the Trustee, states the amount of the allowed or denied claim, based on the net equity of the customer's account on a cash in/cash out basis, and sets forth the amount of SIPC protection available to the customer, if such claim is allowed. Pursuant to the Claims Procedures Order, if the claimant does not object to the Trustee's determination within 30 days of the date on which the Trustee mailed the determination letter, the Trustee's determination will be deemed confirmed by the Court and binding on the claimant.

90. Together with the determination letter, the Trustee mails either a full or partial assignment and release to customers with allowed claims. This agreement states that the claimant agrees with the Trustee's determination and treatment of the claim as set forth in the determination letter. This agreement must be executed and notarized by the claimant and received by the Trustee before the Trustee seeks a SIPC advance to fully or partially satisfy the claim within SIPA limits.

Interim Results of the Claims Process During the Report Period.⁹

91. Notwithstanding the monumental and unprecedented task faced by the Trustee, the Trustee has made substantial progress in reviewing and determining customer claims. As of October 31, 2009, the Trustee had determined 2,870 claims. Out of those determined, the Trustee allowed 1,561 claims and committed to pay approximately \$535 million in cash advances made by SIPC. Based on the committed amount of SIPC advances to date, this is the largest commitment of SIPC funds in any case and exceeds the total aggregate payments made in all SIPA liquidations to date. As of October 31, 2009, the total amount of customer claims

⁹ As noted above, additional progress has been made in the determination of customer claims since the conclusion of the Report Period. As of November 19, 2009, the Trustee had determined 3,201 customer claims, and allowed 1,626 of those claims, for a

allowed was \$4,438,101,443.32. The total over-the-limit claim amount on these claims – the amount by which allowed customer claims exceed the \$500,000 statutory limit of SIPC protection – was \$3,902,678,576.72.

92. As of October 31, 2009, the Trustee had also determined and denied 1,309 claims as having received more money out of the accounts than deposited to the accounts, applying the net investment method (cash in/cash out) to account transactions.

Settlement of Preferences.

93. The Trustee has engaged in settlement negotiations with customers who withdrew funds from their BLMIS Accounts within 90 days of the Filing Date. Such withdrawals are preferential transfers recoverable by the Trustee under 11 U.S.C. §§547(b) and 550(a). To settle potential preference actions against these customers, the Trustee has proposed that the customers agree to authorize the Trustee to deduct the preferential amount from the initial payment advanced by SIPC pursuant to section 78fff-3(a)(1) of SIPA. The allowed claim is thus calculated based on the amount of money the customer deposited with BLMIS for the purchase of securities, less subsequent withdrawals, plus the preferential amount. The customer will be entitled to receive an additional distribution from the fund of customer property based on the total amount of the allowed claim.

94. The Trustee has been working to reach settlements in connection with claims resolution in accordance with the provisions of the Claims Procedures Order. As of October 31, 2009, the Trustee had reached agreements with 50 customers to settle the Trustee's claims against them in connection with preferential transfers. These 50 customers agreed to return to the Trustee a combined total of approximately \$25.7 million to be added to the fund of customer

total of \$4,672,030,364.53 in allowed claims, \$554,790,758.86 in committed SIPC advances and \$4,117,239,605.67 in over-the-limit claims.

property and be available for future distribution.¹⁰ These settlements allow the Trustee to avoid the costly litigation that would be necessary to obtain and collect judgments from each of these individual customers.

The Hardship Program.

95. In an effort to speed relief to those BLMIS customers who had been hardest hit by the BLMIS Ponzi scheme, the Trustee implemented a Hardship Program in early May 2009 to expedite the determination of eligible customer claims and, therefore, payment of SIPC protection to those individuals facing severe hardship. The types of hardship considered includes, among others, the inability to pay for necessary living expenses (food, housing, utilities and transportation); inability to pay for necessary medical expenses; necessity to return to work, at the age of 65 or older, after having previously retired from former employment; declaring personal bankruptcy; and inability to pay for the care of dependents.

96. The Trustee's counsel has evaluated each hardship application to determine whether or not the application should be approved for inclusion in the Hardship Program and provided written notification of the decision within 20 days of receipt of the application. In some instances, rather than deny the application, the Trustee requested further information from the applicants in an effort to make sure the applicants receive full consideration of their hardship status.

97. Once the Trustee accepts an applicant into the Hardship Program, the Trustee endeavors to determine the claim within 20 days of the customer's entry for the Hardship Program if the claimant's account was opened at BLMIS after January 1, 1996. For claims on accounts that were opened at BLMIS prior to 1996, the Trustee is currently working to

¹⁰ As described above, the Trustee must receive an executed assignment and release form before any claim determination is final. Thus, the amount of preferences listed above as committed for future distribution to customers is slightly greater than the amount

reconstruct the records for these years (some of which have been completed). The Trustee is committed to determining these accounts as soon as the records are available. As of October 31, 2009, the Trustee had received 314 Hardship Program applications and approved 207 applications. Most of the remaining applications await the reconstruction of the account records.

98. The Trustee has departed from the practice in past SIPC proceedings and has committed to paying the undisputed portion of any disputed or objected-to claims, including Hardship Claims, even if there is a dispute over the full amount of the claim. The purpose of this procedure is to expedite payment of SIPC protection to claimants while preserving their rights to dispute the total amount of their claim.

The Trustee Has Worked to Keep Customers Informed of the Status of the Claims Process.

99. Throughout the liquidation proceeding, the Trustee has kept customers, other interested parties and the public informed of his efforts by maintaining the Trustee Website, a customer hotline, holding a Section 341(a) meeting of creditors on February 20, 2009, holding various press conferences regarding the status of customer claims and he and his counsel responding to the multitude of phone calls, e-mails and letters he receives on a daily basis.

100. The Trustee established the Trustee Website for centralized distribution of as much information as possible, including (i) regular press releases and statements on the status and progress of the proceedings; (ii) statistics on the number of claims determined, the dollar amount of the proposed allowed claims, the dollar amount of SIPC protection provided on such claims and the dollar amount by which the proposed allowed claims exceed the statutory limits of SIPC protection (which statistics are generally updated twice a week); (iii) copies of Bankruptcy Court filings; (iv) claims-related information and claim forms; and (v) details regarding the Hardship Program, including Hardship Program application forms.

actually recovered as indicated on Exhibit A.

101. The Trustee Website also allows claimants to e-mail their questions directly to the Trustee's representatives, who follow up with a return e-mail or telephone call to the claimants. As of October 31, 2009, the Trustee and his professionals have received and responded to more than 2,200 e-mails from BLMIS customers as well as their representatives.

102. In addition, the Trustee established a toll-free hotline for BLMIS customers to call for information. As of October 31, 2009, the Trustee's professionals have fielded more than 6,000 hotline calls from claimants as well as their representatives, and have provided status updates on claims, addressed claimants' questions or concerns and offered confirmation to claimants that their claims were received. In addition, the Trustee and B&H have responded to hundreds of phone calls.

103. In sum, the Trustee and his team have endeavored to respond timely to every customer inquiry and to ensure that the customers are as informed as possible about various aspects of the BLMIS proceeding.

Contingencies.

104. As discussed above, the Trustee has made progress in determining claims. Nevertheless, substantial contingencies remain, and the Trustee must reserve for these contingencies in determining what distributions can be made immediately to customers with allowed net equity claims. The total universe of allowed claims against customer property cannot be determined with precision until all claims have been fully analyzed, a process that will take time, given the complexity of many claims.

105. In addition, as discussed below, as the analysis of the claims population has progressed, disputes have arisen with claimants over the Trustee's definition of "net equity" as being measured by money deposited, less money withdrawn. This issue is the subject of pending litigation. (*See* Section IX.A *infra*).

106. It is the Trustee's intent, at the earliest practicable time, to seek, pursuant to §78fff-2(c)(1) and related provisions of SIPA, Bankruptcy Court approval for the allocation of all recoveries already obtained and to be obtained to the "fund of customer property." The Trustee anticipates making applications seeking approval for interim allocations and pro rata distributions.

B. CLAIMS OF GENERAL CREDITORS

107. As of October 31, 2009, the Trustee had received 377 timely and 11 untimely secured and priority and non-priority general unsecured claims totaling approximately \$1,735,838,106.73. The claimants include vendors, taxing authorities, employees, and customers filing claims on non-customer proof of claim forms. As of October 31, 2009, the Trustee had received 50 general unsecured broker dealer claims totaling approximately \$29,081,878.41.

108. The Trustee does not currently believe that there will be sufficient funds in the Debtor's estate from which to make distributions to priority, non-priority general creditors and/or broker dealers. Accordingly, the Trustee believes that "[no] purpose would be served, [to] examine [such] proofs of claim and to object to the allowance of any [such] claim that is improper" (*see* Bankruptcy Code § 704(5)). Further, the Trustee does not expect that there will be sufficient funds in the general estate for SIPC to recoup its advances for administrative expenses.