

IV. ADMINISTRATION OF THE ESTATE

48. The Trustee has made every effort to keep customers and other interested parties informed of his ongoing efforts to administer the BLMIS estate, including responding to hundreds of phone calls, emails, and letters, establishing a telephone call center to respond to inquiries from claimants and their representatives (see discussion on customer claims process *infra* at Section VII.A), creating a website to serve as a clearinghouse for information (www.madofftrustee.com), and meeting with representatives of customers, creditors, regulatory authorities and other interested parties.

A. RETENTION OF PROFESSIONALS

49. In addition to the professionals already retained by the Trustee as described in ¶ 23 of the Trustee's First Interim Report, dated July 9, 2009 (the "First Interim Report") [Dkt. No. 314], the Trustee has retained Windels Marx as special counsel, Schifferli Vafadar Sivilotti as local counsel in Switzerland, SCA Creque as local counsel in the British Virgin Islands and a number of consultants and expert witnesses.⁵ The three counsel were retained pursuant to orders of this Court.

B. MARSHALLING AND LIQUIDATION OF ESTATE ASSETS

50. The Trustee and his counsel have worked diligently to investigate, examine and evaluate the Debtor's activities, assets, rights, liabilities, customers and other creditors. Thus far, the Trustee has been successful in recovering a significant number of assets and in liquidating

⁵ A SIPA trustee has authority, subject to approval from the Securities Investor Protection Corporation ("SIPC") but without need for Court approval, among other things, to "hire and fix the compensation of all personnel (including officers and directors of the debtor and of its examining authority) and other persons (including accountants) that are deemed necessary for all or any purposes of the liquidation proceeding." 15 U.S.C. §78fff-1(a)(1). Each of the Trustee's hiring decisions to date has been reviewed and approved by SIPC.

some of those assets for the benefit of customers, totaling \$1,165,756,394.37.⁶ These assets include: the sale of the Debtor's market making operations; the settlement of BLMIS' trades and short positions; cash recoveries from banks and brokerage accounts that held BLMIS' funds; class action settlement recoveries; the sale of sports tickets; insurance refunds; refunds of political contributions; tax recoveries; the sale of BLMIS loan participations; the sale of BLMIS DTCC shares; settlements with various funds and entities for the return of customer property (see Section IX.F *infra*); and various other miscellaneous recoveries. For a more detailed discussion of these recoveries, see the First Interim Report, Section V.B. During the Report Period, the Trustee has made recoveries from the following estate assets:

Earn-out from Surge Trading.

51. Surge Trading Inc. (f/k/a Castor Pollux Inc.) ("Surge") was deemed the winning bidder of the Debtor's market making operations, with a total purchase price of up to \$25,500,000. This purchase price included a closing payment of \$1,000,000 and a revenue-based earn-out which could total up to \$24,500,000.

52. In accordance with section 4.1 (c) of the Second Amended and Restated Purchase Agreement, dated April 29, 2009, by and between the Trustee and Surge, for the quarter ending September 30, 2009, the Trustee received an earn-out of \$3,385.73 from Surge.

Trustee's Various Accounts and Recoveries From BLMIS Accounts.

53. The Trustee maintains a regular operating account at Citibank, which is primarily funded by SIPC advances, and from which he pays administrative expenses and customer claims.

54. On August 27, 2009, the Trustee opened a preferred custody interest-bearing account at Citibank, and \$800,000,000 was transferred into the account. Out of the funds

⁶ This number for recoveries was as of the end of the Report Period. From October 31, 2009 through November 18, 2009, the Trustee recovered an additional \$18,023,417.52, for total recoveries of \$1,183,779,811.89.

transferred, an investment of \$199,999,256.40 was made in 90-day US Treasury Bills. As of October 31, 2009, the balance of the preferred custody account was \$800,514,256.78.

55. The Trustee has a brokerage account with Morgan Joseph & Co., Inc., clearing through J.P. Morgan Clearing Corp. As of October 31, 2009, the value of the Trustee's Morgan Joseph account was \$299,840,638.44, consisting of a money market position having a value of \$279,393,278.44 and stock and bond positions valued at \$20,447,360.00

56. As described in the First Interim Report, the Trustee had recovered a significant amount of cash from banks at which BLMIS maintained accounts (*see* First Interim Report, ¶¶ 35-37). Since the date of that Report, the Trustee had received an additional \$6,536.52 from Bank of New York.

Settlement with NETJETS.

57. The Trustee reached a settlement agreement with NETJETS Sales, Inc. ("NJS"), NETJETS Aviation, Inc. ("NJA") and NETJETS Services, Inc. ("Services" and together with NJS and NJA, the "NJ Companies") regarding the fractional ownership of a Citation X aircraft held by BLM Air Charter LLC ("BLM Air").

58. BLM Air was formed to acquire, own, hold, sell and otherwise deal with and dispose of interests in aircraft. BLM Air was organized with an effective date of January 12, 2001. Initially, the sole member of BLM Air was Madoff. On January 30, 2001, pursuant to an Assignment Agreement, Madoff transferred ownership of "all of the economic interest" in BLM Air to BLMIS and appears to have retained certain non-economic interest. Accordingly, the Trustee has brought a motion, on behalf of the BLMIS and Madoff estates, as the owner of BLM Air.

59. Pursuant to a Repurchase Agreement, the NJ Companies agreed to buy back BLM Air's 12.5% ownership (the "Interest") in the aircraft for \$752,963. In consideration of this amount the Trustee and the NJ Companies agreed to refrain from making any further claims against each other, including preference claims or claims for contribution, through the bankruptcy process or otherwise.

60. The Bankruptcy Court approved the settlement with the NJ Companies by order dated July 28, 2009. The settlement closed on August 18, 2009, and the Trustee received payment in the amount of \$752,963.

Class Action Settlement Recoveries.

61. To date, the Trustee has identified claims that BLMIS had in at least six class action suits. The Trustee received distributions from five of the six class action settlements totaling \$54,858.99.

62. In addition, the Trustee has identified claims that BLMIS may have had in 36 other class action suits for which BLMIS had not completed proofs of claim. The Trustee has filed proofs of claim in ten of these cases, supported with necessary and appropriate documentation. The Trustee has received an award from one of those class action settlements in the amount of \$34,606.74.

63. The Trustee continues to review this area.

Madoff Assets.

64. During the Report Period, the Trustee and his counsel have advanced in their investigation and efforts to marshal certain assets acquired with BLMIS funds located domestically and internationally that are potentially worth millions of dollars. Among other things, the Trustee and his counsel are in the process of marshalling a fifty-percent co-ownership

interest in a luxury private jet, an Embraer Legacy 600, Model EMB-135 BJ (the “Aircraft”) which was acquired in 2008 using \$12.4 million of BLMIS funds, and title to which was placed in BLM Air.⁷

65. In addition to further investigation and discussions with parties in interest over the past several months, the Trustee and his professionals have consulted with the USAO regarding coordination of recovery efforts with respect to a number of potential assets including, among others, the Aircraft (*see* Section VI *infra*). The Trustee believes that the value of a number of assets, including the Aircraft, would best be preserved by him, pursuing legal remedies uniquely afforded him under the Bankruptcy Code.

66. With respect to potential assets located abroad, the Trustee has continued to consult extensively with his counsel and international counsel regarding alternative strategies to maximize asset recovery for the benefit of the consolidated BLMIS estate. The Trustee and his counsel also continue to confer with the USAO and the JPLs in order to maximize efficiency in the coordination of asset recovery efforts.

Miscellaneous Recoveries.

67. In addition to the above, the Trustee has recovered \$80,999.27 in miscellaneous recoveries from sources such as cancellation of various subscriptions and memberships.

C. WIND-DOWN OF ESTATE OPERATIONS

Termination of BLMIS Employees.

⁷ In furtherance of that goal, on November 12, 2009, the Trustee commenced a proceeding under chapter 11 of the Bankruptcy Code for BLM Air, which is 100% economically owned by BLMIS. The filing was precipitated by the possibility that one of the more important agreements relating to the maintenance of the Aircraft was going to be unilaterally terminated by the counterparty on November 13, 2009, and that such a termination would have adversely affected the value of the Aircraft. The filing of the bankruptcy is designed to help preserve the value of the Aircraft, and the Trustee believes that ultimately the Aircraft can be marketed and sold through the bankruptcy proceeding for a significant price pursuant to relevant provisions of the Bankruptcy Code.

68. As was described in ¶ 52 of the First Interim Report, as of December 12, 2008, 140 individuals were on the BLMIS payroll. The two largest termination stages took place at the end of January and March, which accounted for 80% of the individuals on payroll. The initial termination stage reduced payroll costs by approximately 42% and the March termination increased the reduction of payroll costs to approximately 95% of the total payroll costs at the beginning of January. The remaining three (3) employees on the Trustee's payroll who were needed to assist in winding down certain aspects of the business were terminated as of June 30, 2009.

Termination and Liquidation of BLMIS-Sponsored Benefit Plans.

69. As part of the process of winding down the business operations of BLMIS and dismissing its many managers and employees in an orderly and equitable fashion, the Trustee (through counsel) reviewed the many employee benefit plans BLMIS sponsored and maintained for its employees and their dependents, incident to terminating those plans and providing for the orderly resolution and liquidation of all affected individuals' and vendors' plan-related rights and claims. Initial efforts by the Trustee, B&H and AlixPartners LLP, the Trustee's consultant and claims agent ("AlixPartners"), consisted of identifying all such plans; investigating the extent to which those plans had been administered, funded, invested and maintained; identifying and rectifying any problems associated with the communication of terms, the payment or denial of benefits, and the arrangements made with plan fiduciaries and third party service providers; identifying any circumstances under which claims might be made, or actions could be taken by federal or state regulators, against the estate; and protecting the privacy rights of BLMIS' current and former employees and dependents.

70. As a result of the initial efforts of B&H and AlixPartners, BLMIS was found to have provided health, accident and sickness benefits, retirement-related benefits, and life insurance, disability income and accidental death and dismemberment benefits under as many as six (6) identifiable employee benefit plans; some of those benefits were provided through group insurance contracts and policies, while others were provided on a self-insured basis (including a group health plan which covered substantially all of BLMIS' current and former employees and their respective dependents) or were provided through a separately-established trust fund (such as the BLMIS-sponsored 401(k) plan). Substantially all of the benefit plans needed to be brought into compliance with relevant law, including the Employee Retirement Income Security Act ("ERISA") prior to termination, and several of the contractual arrangements made with third parties, including third party administrators, trustees and insurance companies, needed to be modified or replaced.

71. On May 27, 2009, the Bankruptcy Court entered an order confirming the Trustee's authority to modify, then terminate effective May 31, 2009, and finally liquidate and wind down, all of the BLMIS-sponsored health and welfare plans by collecting and adjudicating all plan-related claims made by employees, covered dependents and third parties; negotiating agreements with vendors to provide for the handling, storage and disposal of plan records (including medical records subject to federal and state privacy laws); notifying all affected individuals and third parties of their plan-held or plan-related rights; and providing for the payment of meritorious claims and the denial and discharge of ineligible or untimely claims. The liquidation and wind-down process is expected to be completed by the close of the 2009 calendar year, ending with the submission in 2010 of final reports prepared by the Trustee and

tax reports to the federal authorities responsible for plan oversight, including the Internal Revenue Service and the United States Department of Labor (“DOL”).

72. The Trustee is also seeking a court order confirming the Trustee’s authority under SIPA and the Bankruptcy Code to first modify, and then terminate effective November 30, 2009, the BLMIS-sponsored 401(k) plan, subject to any restrictions or requirements suggested by the DOL, which is currently reviewing the plan. A hearing date to approve the Trustee’s motion to terminate the 401(k) plan is set for November 24, 2009. To the extent that plan participants do not move their contributions out of the BLMIS-sponsored 401(k) plan within a reasonable amount of time subsequent to the plan termination date, the Trustee will select a substitute custodian and assign and transfer the balance of the remaining accounts before year-end. Winding down the 401(k) plan is expected to be completed by the close of the 2009 calendar year; however, the time required to compile and submit final reports and returns to the federal authorities responsible for plan oversight is will occur after that date.