



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

**July 12, 2012** - With the Supreme Court's decision in late June to pass on a challenge to the equity calculation formula struck by the SIPA Trustee, the biggest hurdle to future distributions has now been removed. Though the occasion won't make as many headlines as the collapse of Bernard Madoff's Ponzi scheme, it should be big news that Madoff's investors are finally going to be getting more of their money back.

Unraveling the most massive global fraud of all time was never going to be an easy task, and at times progress has seemed frustratingly slow to Madoff's victims. This is par for the course in any bankruptcy, with creditors fighting over a limited pool of assets available to satisfy their claims.

But the Madoff case has been orders of magnitude more complicated, due to the size, extent, and duration of the fraud. With so much money gone up in smoke the moment Madoff's frauds were revealed, the legal infighting to recover false investment returns paid out by Madoff was destined to be fierce. There was also a real risk that the courts would hold much of the money to be beyond the reach of the Trustee, denying a meaningful recovery to those who hadn't withdrawn funds before the collapse. Indeed, at the outset, some pundits expected recoveries of just pennies on the dollar and even that after a decade or more of litigation.

But the pundits were wrong. The results to date not only belie their worst-case scenario, but also reflect a recovery effort far more successful than nearly anyone expected.

The numbers truly speak for themselves. The Trustee has recovered or reached agreements to recover more than \$9.1 billion for Madoff customers since his appointment in December 2008—equivalent to \$7 million a day. These recoveries exceed prior recovery efforts related to all other Ponzi schemes, in terms of dollar value and percentage of stolen funds recovered.

But the best evidence may be the prices at which Madoff claims are trading on secondary markets. While many Madoff customers have held on to their claims, others sold them at a discount to investors so as to avoid the uncertainty and delay of the resolution process. To date, nearly \$2.8 billion of allowed claims have been sold, the equivalent of approximately 40 percent of the claims allowed by the Trustee.

Since December 2010, when the Trustee announced a major settlement to recover money Madoff had paid out to investors before his firm collapsed, claims have been trading in excess of 60 cents on the dollar, an unusually high value in any bankruptcy case. And as more money has flowed to the Trustee, the value of Madoff claims has risen.

More of those recovered funds will soon be making their way to Bernard Madoff's victims. To date, the Trustee has distributed more than \$1.1 billion, with the first interim distribution in October 2011. That includes more than \$802.3 million in advances requested on victims' behalf by the Trustee.

But further distributions were stymied by legal challenges to the distribution formula meant to insure fair and equitable treatment of all Madoff's customers. A small group of Madoff clients argued all the way to the Supreme Court that distributions should be based on the final set of account statements sent by Madoff Investments, reflecting years of fictional gains. That argument was soundly rejected by the Bankruptcy Court and Court of Appeals, and the Supreme Court's decision not to hear their final appeal settles the matter once and for all.

It also clears the way for further distributions to victims over time, amounting to billions of dollars. Additional billions in recoveries may yet come from litigation over pending claims.

Making right Bernard Madoff's wrongs has been a long and complex process, and it has been understandably frustrating to both his victims and the public. A quick recovery was never in the cards, given the depths of the investigations required to trace Bernard Madoff's fraud and the fact that parties involved in the bankruptcy always have the right to challenge the Trustee's actions through slow-moving litigation. But it is time for the focus to shift to the substantial and important progress that has been made as we continue working toward further success.

David J. Sheehan  
*July 12, 2012*