

August 30, 2013

Mr. Stephen P. Harbeck
President
Securities Investor Protection Corporation
805 Fifteenth Street, NW, Suite 800
Washington, DC 20005-2215

Dear Mr. Harbeck:

The Subcommittee on Capital Markets and Government Sponsored Enterprises maintains an active interest in the Securities Investor Protection Corporation's (SIPC) liquidation of BLMIS, the securities firm of Bernard Madoff and matters related to SIPC's consideration of the bankruptcy of SIPC-member, Stanford Group Company. To assist our ongoing review, we request answers to the questions presented below:

- 1) In a letter dated February 16, 2011, the Subcommittee requested detailed information concerning the 138 accounts in the BLMIS case with Net Investment Method balances, at closing, exceeding \$10 million and with aggregate claims representing roughly 80 percent in dollar value of all the claims deemed eligible for SIPA assistance. We need updated and additional information regarding each of these accounts. For each account, please provide the following information: NIM claim amount; Final Statement amount; term of account relationship; aggregate number of withdrawals; aggregate value of withdrawals; type of account holder (LLP, LLC, etc.); domicile of account holder; current status of claim; if claim resolved by settlement, provide details of settlement; distributions from SIPC Fund; and distributions from customer property.
- 2) The Table presenting basic facts on the account history of the 44 unresolved accounts, as of March 2011, indicates that 24 of these accounts had withdrawals averaging 100 or more per annum and in many cases aggregating hundreds of millions, even billions. These 24 accounts have aggregate claims for priority allocation of customer property of roughly \$7.3 billion, representing some 40 percent of eligible claims. There is a high probability that these professional institutional investors were using BLMIS as a high-yielding transaction account for idle funds awaiting a more profitable investment opportunity. Given that the Trustee has defended NIM as a necessary means to provide for equitable distribution of customer property, does SIPC have any reservations with treating these accounts as "net losers" and deserving of preferential equitable treatment?

- 3) Please provide the following information detailing distributions by the Trustee in the BLMIS case: aggregate distributions by number of accounts and dollar value; subdivide foregoing by source (SIPC Fund and customer property); number of accounts and aggregate value of accounts for which NIM claim was satisfied by a SIPC Fund distribution; number of accounts and aggregate dollar value for which NIM claim was satisfied by SIPC Fund and customer property distributions.
- 4) What is the current dollar value of the customer property recovered and available for distribution in the BLMIS case, and the current dollar value of customer property for which recovery is a certainty? What are the amounts currently being reserved for the completion of ongoing or anticipated litigation?
- 5) Using the stratified schedule presented on page 5 of SIPC's responses to the Subcommittee, dated September 7, 2010, please expand the schedule to show the current status of each strata, showing distributions by source; number of accounts satisfied; number of accounts not yet satisfied; and current number of accounts with outstanding claims and the aggregate value of those claims by strata.
- 6) For illustrative purposes, assume that the next distribution of customer property in the BLMIS case will amount to \$1 billion. Please show how that sum will be distributed by amount and account numbers to the stratified table as it currently stands, including the number of additional accounts, if any, for which claims will be satisfied. Additionally, please include the share in dollars to be returned to SIPC as subrogate. At what point in the distribution of customer property is it estimated that all of the claims in stratas 1, 2, and 3 of the table will have been satisfied?
- 7) From the total amount of customer property distributions made to date in the BLMIS case, what is the total value reimbursed to SIPC as subrogee for accounts fully satisfied? When the Trustee distributes all of the \$9.3 billion he currently expects to have available, what percentage of the \$807 million in SIPC "advances" will be recaptured through SIPC's subrogated position?
- 8) Please provide the current aggregate expenditures related to the Madoff liquidation by function (legal fees, accounting fees, other consulting services, general administration, etc.). What is the current forecast of total expenditures by function to complete the liquidation?
- 9) Please provide the functional expenditure totals involved in the Trustee's major law suits, and the current status of those cases in terms of recovery. Given that the Picower accounts, at closing, showed indebtedness to BLMIS of between \$7 and 8 billion, how much were the legal fees to collect this indebtedness?
- 10) To date, please provide the aggregate amount paid for professional services by the Trustee and by his law firm serving as counsel to the Trustee. In a report to the Subcommittee on the BLMIS liquidation, prepared by the Government Accountability Office (GAO), the Trustee advised that he contributed his Trustee compensation to his

law firm, but, because of the firm's confidentiality policy, was unable to disclose his contractual arrangement with the firm concerning sharing of firm revenues generated by him. Has the Trustee or the firm shared those contractual details with SIPC? If not, do you believe that such information should be publicly available, given that the Trustee's appointment, powers, and service all derive from the Securities Investor Protection Act (SIPA), a public law?

- 11) At the close of this fiscal year, what is SIPC's forecast of its cash on hand? What is SIPC's current budget for general administration? For the next five fiscal years, what are the current forecasts for income from the assessments of member firms? In the management of its overall resources, does SIPC maintain a segregated reserve for potential SIPC payments to customers of failed member firms or is income from investments and assessments administered as a single pooled fund? In its report to the Subcommittee, the GAO reported the average annual assessment and the median annual assessment in 2010. Please update those numbers for 2012, and also for the same period please provide the average annual assessment for the top five broker-dealer members (aggregated to avoid identifying any firm).
- 12) Section 7(d) of the SIPA directs the Trustee to prepare and submit to SIPC a report on the Trustee's investigation of the acts, conduct, property, liabilities, and financial condition of the debtor and any other matter to the extent relevant to the liquidation proceeding. Please provide the Subcommittee with a copy of this investigative report for the BLMIS case.
- 13) Due to SIPC's resistance to obeying a direct instruction from the SEC to initiate a SIPA liquidation of the failed broker-dealer firm owned and controlled by Allen Stanford, the SEC has pursued an Enforcement Action against SIPC (currently being litigated on appeal with the DC Circuit Court). To date, what has SIPC expended for the retention of private law firms and what does it forecast will be future such costs? Have there been any other additional costs to the SIPC for defending this case—such as marketing, public relations, etc.?
- 14) In defense of the SEC's Enforcement Action, SIPC has taken the position that the SEC was influenced by political pressure in order to vote to overturn the SIPC's previous position that Stanford Group Company did not have customers in need of protection. Was the SIPC aware that in November 2009, the Stanford Victims Coalition ("SVC") formally asked the Commission to review the SIPC's decision stated in an April 2009 letter to the Receiver for Stanford Group Company and Stanford International Bank?
- 15) Was the SIPC aware that during the period between November 2009 and May 2011, just prior to the Commission's vote on how to respond to the SVC's November 2009 request, that the SVC had participated in numerous discussions with the SEC about their request—including meetings with counsel for each of the Commissioners—and submitted thousands of customer documents neither the SEC or the SIPC had ever seen? It appears the Stanford victims simply exercised their right under the SIPA to ask the SEC, as the authority over the SIPC, for a review of the SIPC's decision since the victims

themselves have no means to seek a judicial review of the matter. Do you disagree that the process that took place, while time-intensive, was exactly what was intended when *SIPC v. Barbour* determined that individual investors cannot sue SIPC to force a liquidation under the SIPA? Or, alternatively, do you believe that SIPC should have the sole authority to determine when a liquidation is commenced?

16) During SIPC's review of the Stanford Group Company, did SIPC or its Board ever make an offer to settle with the customers of that SIPC-member firm? If so, what was the nature of the offer? Was a SIPA liquidation proceeding pending at that time? If not, does SIPC believe it has the authority to settle with customers of a SIPC-member firm outside of a SIPA-authorized and Federal District Court-approved liquidation proceeding?

We would appreciate having your responses no later than September 13, 2013. Thank you for your assistance.

Sincerely,

SCOTT GARRETT
Chairman
Subcommittee
Capital Markets and
Government-Sponsored
Enterprises

CAROLYN MALONEY
Ranking Member
Subcommittee
Capital Markets and
Government-Sponsored
Enterprises