



SECURITIES ALERT

NOVEMBER 2010

Bankruptcy Judge Approves Procedures to Facilitate Claw Back Litigation Against Madoff Investors

A recent bankruptcy court decision, which approved procedures governing upcoming claw back litigation, paves the way for the start of long-feared claw back litigation against investor victims of the Madoff fraud. The claw back suits will seek to recover funds withdrawn from Madoff accounts prior to the revelation of the scheme. Many had hoped that SIPC Trustee Irving Picard might refrain from bringing mass law suits against these so-called "net winners" because of the immense harm such suits will harm to people who have already suffered enormously from the fraud. Signs indicate that Picard is moving forward with those complaints in a large way.

In implementing such comprehensive procedures, the Court seems to anticipate an oncoming case load, the size of which would suggest that the Trustee intends to bring a large number of claw back cases. **The Trustee must file the claw back complaints ahead of the expiration of the statute of limitations on December 10, 2010**, after which the claims will be forever time-barred.

The procedures approved by the Court for "Avoidance Actions"—actions brought by the Trustee seeking the avoidance and recovery of preference transfers or fictitious profits (but not principal)—include the following:

- All actions will be referred to mandatory mediation, with a mediator to be selected jointly by the Trustee and defendant. No mediation will last for more than 120 days after the mediator is selected. Where the claw back sought is \$20 million or less, the Trustee will pay the fees and expenses of the mediator.
- Defendants will be given at least 60 and up to 150 days to answer the Trustee's complaints, as opposed to the standard 30 days.
- Discovery will be "limited solely and specifically" to key issues with limited interrogatories.
- The Court will only hold court proceedings related to these actions on special omnibus hearing dates. The initial Avoidance Actions Omnibus Hearings will be held on January 26, 2011, February 16, 2011, March 23, 2011, April 27, 2011, May 25, 2011, and June 29, 2011.

Mandatory mediation gives defendants the opportunity to explain the good faith basis for their withdrawals from their Madoff accounts over time, and the hardships that claw backs would visit upon their lives. The Trustee's attorneys have stated that he has opted not to file some claw back cases in instances where victim customers adequately show their hardship circumstances.

HERRICK

New York Office

2 Park Avenue
New York, New York 10016
Phone: (212) 592-1400
Fax: (212) 592-1500

Princeton Office

210 Carnegie Center
Princeton, New Jersey 08540
Phone: (609) 452-3800
Fax: (609) 520-9095

Newark Office

One Gateway Center
Newark, New Jersey 07102
Phone: (973) 274-2000
Fax: (973) 274-2500

Attorney Advertising



H E R R I C K

Taken as a whole, the procedures suggest that the Trustee intends to bring a large number of claw back cases, and the Court is putting the infrastructure in place to handle the oncoming case load.

[Click here](#) to read a complete copy of the Court order establishing litigation case management procedures for avoidance actions.

For more information about this or any other Madoff related matter, please contact: **Howard Elisofon** at 212-592-1437 or helisofon@herrick.com or **Steven D. Feldman** at 212-592-1420 or sfeldman@herrick.com.

Copyright © 2010 Herrick, Feinstein LLP. Securities Alert is published by Herrick, Feinstein LLP for information purposes only. Nothing contained herein is intended to serve as legal advice or counsel or as an opinion of the firm.