



Fairfield Funds: update

Insights - 10/10/2010

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Liquidators were appointed over Fairfield Sentry Limited, Fairfield Sigma Limited and Fairfield Lambda Limited (together “the Funds”) by orders of the BVI High Court dated 21 July 2009, 21 July 2009 and 23 April 2009 respectively. Fairfield Sentry Limited was the largest “feeder” fund to Bernard L Madoff Investment Securities LLC (“BLMIS”) and invested approximately 95% of its assets with BLMIS. BLMIS was placed into liquidation proceedings in the United States in December 2008, after it was revealed that Bernard Madoff operated BLMIS as a Ponzi scheme for many years. Fairfield Sigma Limited and Fairfield Lambda Limited were both sub-funds of Fairfield Sentry Limited and invested all of their assets with Fairfield Sentry Limited.

Over the course of the last few months, the liquidators of Fairfield Sentry Limited have issued proceedings against over 160 redeemed investor Defendants in the BVI Commercial Court and over 160 redeemed investor Defendants in the New York State Supreme Court. We understand from Counsel to the liquidators of Fairfield Sentry Limited that those claims were originally issued on a protective basis given possible limitation issues in order to stop time running on those claims. We also understand that it was for similar reasons that the liquidators obtained permission from the BVI High Court to serve those proceedings on the various named Defendants out of the jurisdiction. We understand from the liquidators that steps are now being taken to serve proceedings on the various named Defendants in the BVI proceedings pursuant to the provisions of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial matters.

Justice Bannister QC, the Commercial Court Judge in the BVI, has been very closely connected to Fairfield Sentry Limited’s liquidation and has asked the liquidators to consult with him before taking any significant step in the liquidation. He has also asked the liquidators to provide him with copies of all legal advice in advance of giving the liquidators direction. This necessarily means that the Court file is now populated with affidavits containing privileged legal advice; it is for this reason that the Judge made an order sealing the Court file. The sealing order was extended to all documents on the Court file, including those documents that members of the general public would otherwise usually be entitled to

see. This created something of a problem for the Defendants to the BVI proceedings: they could see from the Commercial Court cause list that proceedings had been issued against them but they were not in a position to ascertain the nature of those proceedings. Following representations to the Judge from our litigation department, the Judge has now agreed that the Claim Forms and Orders on the Court files should be open to inspection.

It would appear from the Claim Forms that have been issued in the BVI that the liquidators are bringing claims in mistake and restitution against Fairfield Sentry Limited's redeemed investors on the basis that the redemption proceeds that were historically paid to those investors were based on misstated net assets values as a result of the Madoff fraud. We will not be in a position to confirm the true nature of those proceedings until such time as we have seen copies of the Statements of Claim.

The liquidators have indicated to the Defendants to the BVI proceedings that they may be willing to enter into standstill agreements with the investors following service of proceedings. Ogier's litigation department is now in the process of negotiating an acceptable form of standstill agreement with the liquidators. We are presently advising eight of the named institutional Defendants to the BVI proceedings although we are not instructed to accept service of proceedings on behalf of any of them.

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