FDIC and SIPC Issues Regarding Stanford International Bank CDs

Posted August 17, 2009

Question 1. I understand that the U.S. Federal Deposit Insurance Corporation ("FDIC") provides insurance against loss in value of deposits when a member bank fails. Is FDIC protection available to cover the losses on my SIB CDs?

Answer. Unfortunately, the answer is no. FDIC insurance applies only to deposits of U.S. banks that are members of the FDIC. SIB is not a U.S. bank and is not a member of the FDIC. Antigua, the country in which SIB is chartered, does not have a deposit insurance program like the FDIC.

Question 2. I understand that the U.S. Securities Investor Protection Corporation ("SIPC") provides protection for securities in customer accounts when a brokerage firm is closed due to financial difficulties. Is SIPC protection available to cover the losses on my SIB CDs?

Answer. The Receiver has explored this question with SIPC, and unfortunately the answer is no. SIPC has advised the Receiver that holders of SIB CDs will not be able to obtain coverage from SIPC for the loss in value of the CDs. Although Stanford Group Company (and its clearing brokers, Pershing LLC and J.P. Morgan Clearing Corp.) are SIPC members, SIPC coverage is very different from FDIC coverage.

First, SIPC coverage is very different from FDIC coverage. SIPC protects only the *custodial* function of an insolvent member firm. Thus, SIPC only provides protection for securities and cash that are missing from a customer's account at a SIPC member firm. That is, SIPC only ensures that securities and cash that are contained in a customer account at a SIPC member firm remain in the customer's account. SIPC does not insure or otherwise provide protection for a *loss in the value* of the securities that are in the customer's account, whether the loss in value occurs because of changed business conditions, fraud on the part of the issuer, or any other reasons.

In this case, the securities themselves -- the certificates of deposit -- are not missing. The problem instead is that they are not backed by cash or other assets sufficient to repay any significant portion of the amount owed. Although there has been a substantial loss in the value of the SIB CDs, SIPC provides no protection for such a loss in value.

Second, even if CDs were deemed to be missing, SIPC coverage would apply only if the securities had been held in a customer account at a SIPC member brokerage firm. The SIB CDs were (and are) generally held by the customer directly or on the customer's behalf at a Stanford entity that is not a SIPC member, such as Stanford Trust Company or SIB itself. The SIB CDs were not generally held at Stanford Group Company, Pershing LLC or J.P. Morgan Clearing Corp. SIPC does not provide any protection of any kind with respect to securities that are not held in customer accounts at SIPC member firms, and the SIB CDs were not generally held in accounts at SIPC member firms.

Finally, even if CDs had been held in a customer's account at Stanford Group Company or another SIPC member firm and were now missing, SIPC protection would not cover the original purchase price of the CDs. Instead, SIPC's obligation following the initiation of a SIPC-administered liquidation of that firm would be to replace the CDs or, if the CDs could not be purchased in a fair and orderly market, to pay cash based on the value of the CDs at the time the liquidation proceeding commenced, not on the amount the customer paid to acquire the CDs.

To view SIPC's letter to the Receiver explaining why coverage is not available, click here. To view the Receiver's letter to SIPC requesting a statement of its position, click here.

Question 3. I understand that SIPC coverage is available to investors in the Madoff fraud. Why do they, but not SIB CD holders, receive SIPC coverage?

Answer. Based on discussions with the SIPC staff, the Receiver understands that SIPC coverage is available for investors who had brokerage accounts directly at Bernard L. Madoff Investment Securities LLC. That firm is a SIPC member firm where securities are missing; SIPC coverage is thus available to cover the net equity balances of the customers of that firm. As discussed above, although Stanford Group Company, Pershing and J.P. Morgan are also SIPC member firms, neither the SIB CDs nor the other securities in Stanford Group Company customer accounts at Pershing or J.P. Morgan are missing.

To further explain the difference, in the Madoff case investors put money into Bernard L. Madoff Investment Securities LLC and were told that their funds were used to buy securities of various companies, such as perhaps ExxonMobil. But the money was apparently never used to buy securities, either from the issuer ExxonMobil or another ExxonMobil stockholder. The shares of ExxonMobil that the investors believed were in their accounts were not there. SIPC protection applies because the securities were missing.

Here, money paid by investors to purchase SIB CDs was paid to SIB, the issuer of the CDs. The investors (or someone on their behalf) received certificates representing the CDs, or in some cases SIB simply held the certificates for the investors. The CD securities themselves are not missing. But the CDs are now worth far less than the amount paid to buy them, because they are not backed by sufficient cash or other assets to repay any significant portion of the amount owed. SIPC protection does not cover loss in value of securities, whether the loss in value is due to changed business conditions, poor investments, mismanagement, fraud on the part of the issuer or any other reason.

Question 4. Would SIPC protection be available to me if I was misled into purchasing CDs by a broker at Stanford Group Company?

Answer. No. SIPC protection would not apply in such a situation. SIPC offers no protection for damages resulting from fraud, fraudulent inducement, misrepresentation, non-disclosure, or other similar acts or omissions in the sale of securities by a SIPC member firm or its personnel.

For more information about SIPC coverage in general, see SIPC's website at www.sipc.org.