



BDUG Class Actions Focus Group: Meeting with Gilardi & Co

Meeting Held August 28th, 2008

The Class Actions Focus Group has been created to discuss industry issues through idea sharing and best practices. The goal is to drive change and further educate.

Attendees from Gilardi & Co:

Peter Crudo, Chief Operating Officer

Dennis Gilardi, President

Laura McDermott, Director of Securities

Summary:

We thank Gilardi and Co. for attending and presenting their position, and their open responses to our questions. They made clear their understanding of their responsibilities in the claims process, and also related what they believe our duties are as custodians and fiduciaries for our clients. This was often different from our interpretation, and the discussions will continue with Gilardi and with other claims administrators as well.

Topics:

1. General process of Claims Administrator appointments

- a. How is Gilardi selected – what does that process entail?**
- b. What guidelines must Gilardi follow through the settlement administration process – who enforces those guidelines?**

Question: How is Gilardi is selected as claims administrator on a class action

Answer (Peter): We are selected by the Court after all parties' counsel agree. Guidelines are established and Gilardi is subject to the court order and case law, including the claims forms that are specified and must meet certain parameters.

Question (Lacey Peterson): We have noticed that each Claims Administrator has different forms, different language. Is there a Gilardi template?

Answer (Peter): there are style differences, nuances of the case represented, all are driven by and approved by the court.

Question (Jane Kenyon - Citi): Is your first involvement with the case upon settlement?

Answer (Peter): Sometimes we are involved pre-settlement, sometimes post.

Question (Kurt Whitford): are all forms approved by the court and does the court dictate them?

Answer (Peter): the forms are drafted by counsel on both sides, primarily by the plaintiff's counsel, and the court must approve and finalize. Gilardi then formats the forms.

2. Settlement fund distribution

- a. Can funds be sent out via wire vs. individual checks? If not, what steps are being taken to offer this in the future?**

Gilardi agreed that they can send individual wires in place of individual checks.

Question (Lacey Peterson – Wells Fargo): Most institutions are trying to reduce ‘live’ checks and reduce paper. Most other Claims Administrators agree to send lump sum wire payments accompanied by a breakdown of individual payouts.

Answer (Peter): We are capable of doing so but do not for several reasons:

- Due process
- Ensuring that the payments get to the intended Beneficial Owner
- Duty to court of oversight of funds

Therefore Gilardi sends individual checks in the name of the “harmed” party.

Problems with the aggregate wires:

- when put in an omnibus account, who gets the interest?
- what happens when an account cannot be found?
- not having transparency to what processes that are being followed

It was pointed out that this is a discussion that the BDUG Focus Group has been working on, and that often the funds are escheated to the state. Gilardi responded that those payouts should be returned to the settlement fund and if a claimant cannot be found, they go through research to attempt to pay.

Question (Lacey Peterson): Wells Fargo turns settlement funds around immediately and pays upon receipt, accumulating little or no interest. There are more delays with physical checks than with wires as wires and data can be run through the trust system immediately.

Answer (Peter): What happens to the funds if the account is closed?

Comment (Lacey): They are forwarded to the successor claimant if that party can be found. Otherwise returned to the claims administrator or escheated to the state. We act on behalf of the claimant.

Comment (Peter): It is not custodians’ money to escheat to the state. Gilardi quoted being governed by the fiduciary responsibility and the type of the custodial relationship.

Question (Liz Gabb - Citi): Are there standard practices that can be shared, e.g. ‘send payments back to the fund’ ?

Answer (Peter): Gilardi assumes the monies are being sent on to the individual shareholder. How can monies be escheated if the checks are made out to the individual claimant and what are our duties if we do not have a way to pay the claimant?

Comment (Scott): we struggle with our legal and compliance areas, often different from what Ops want to do. Can Gilardi **state** that any un-creditable funds must be returned in all cases? We had a fiduciary responsibility at the time the claim was filed, but are we responsible to ensure payment if the client account is now closed with no forwarding?

Comment (Dennis Gilardi): if the claim is filed by the custodian, then the custodian has the obligation. What authority do the custodians have to take the money if there is no contractual relationship? Concern when the custodian escheats to the state.

Question (Jane Kenyon): is this stated in the court documents?

Answer (Peter): It is sometimes included in the court documents

Question (Liz Gabb): What if the client were to request the monies of us after we returned it to the fund? Will Gilardi return it to us for the client?

Answer (Peter): No.

Comment (Chris Buck – JPM): That is why we escheat - we can always get it back from the state.

Comment (Peter): How long does it typically take to pay out funds? Do we pay with interest?

Comment (Liz): Some of us do pay interest.

Comment (Chris): It can often take one year between filing and payment, we do not pay the interest.

Question (Chris): Gilardi typically sends a box of checks made out to JPM in favor of the Beneficial Owner – how is that different than sending an aggregate wire, which many Claims Administrators do send, and which would allow us to pay more quickly?

Answer (Peter): Documents specify what rules need to be followed, although sometimes not all is specified

Comment (Lacey): this is what we are referring to – in some cases the documents will state to return the funds, but mostly they do not.

Comment (Gilardi): Checks should not be cashed except expressly for the individual. Would the custodians be willing to provide declarations of what we did to find and pay the individual?

Comment (Paul – Comerica): seems that in following our fiduciary responsibility, as many clients as possible get the funds. Just as the Claims Administrator’s primary responsibility is to distribute funds, ours is to get them to the beneficial owners. The custodians are taking the individual checks, depositing them to an omnibus or general account and then crediting on to the individual accounts anyway.

Comment (Peter): (Gilardi believed the check was made out to the beneficial owner. JPM states this is not the case) Gilardi’s duty is to the court and when they have raised this issue with courts and counsel, there have been concerns about what affirmative steps are taken to ensure monies are delivered.

Question (Sue Zamorski – M&T): we **do** return undeliverable checks. What happens to the funds? Do you redistribute to the same beneficial owners or only those who received monies in the first payout?

Answer (Peter): Depends on the specific order of the court in re residual distributions. The pro rata may be different, and always disbursed with interest

Comment (Dennis): If there is an outstanding check, the remaining funds earn interest (can be 0) and the fund keeps the interest. Gilardi follows up with phone calls, etc, depending on the level of follow-up specified in the court order (these can differ). The Fund should not carry the costs.

Comment (Peter): Gilardi only willing to send a spreadsheet for reconciliation if requested on individual basis, for example by a custodian who files from multiple locations.

Question: Is there a minimum amount threshold?

Answer (Laura): there is a volume threshold. It takes additional time to generate the spreadsheet and we need guidelines. For example, over 1,000 payouts with minimum \$25.

Comment: Too high because even with 100 payouts we need to make sure we receive every check.

Answer (Peter): If the claim is filed as a batch, then Gilardi groups claims and assigns sequential numbers and reconciliation should not be difficult. Some institutions file electronically and some on paper. Comment: Paper would be the exception from custodians

Question (Karen Lightfoot – UMB) : Why are checks not received in bulk containers?

Answer (Laura): we send in bulk containers when there are over 10,000 checks

3. Use of Social Security Numbers

- a. Can SSN be masked on filings to further secure data? If not, what steps are being taken to pursue this in the future?**
- b. Why is there so much variation in the industry between Claims Administrators on the use of masked SSN?**

Gilardi concerns:

- the court does not provide for masking of SSNs: the court-approved documents specifies what must be submitted, we are bound by the court

- If the court **requires** social security number certification and numbers are masked, then Gilardi will have problems with duplicates
- we are happy to work towards accepting masking

Question (Jane): we are looking for standard practices for all topics across all claims administrators, e.g. aggregate wires, issuing of reconciliation spreadsheet, etc.

Answer (Peter): we will work towards the spreadsheet.

Question (Paul Sherf – Comerica): The aggregate wire issue is very pressing as we are all trying to increase efficiency and ensure proper credit. If the institutions are the majority of filers, then we need to work together to ensure monies are getting to the proper accounts.

Answer (Peter): We want to work with you to make process smooth and efficient. What declarations would the institutions be willing to make that they are following up and getting monies to the beneficial owners? How long do you search for claimants? There could be conflicts with the court documents. (up to one year only?)

Comment (Paul) : We could get that document together.

Question (Dennis): Do we coordinate with the predecessor custodian or trustee?

Question (Paul): Do we have what authority to file?

Answer (various): differing opinions

Comment (Paul): the custodians often use dummy tax ids to file. The industry needs to look at whether the filings are even allowed. The Claims Administrators have to check dupes.

Comment (Paul): Custodians are asking for help in paying. Tax ids are a different issue.

Comment (Gilardi): Assuming there was a declaration by the custodians stating what is done in cases of closed accounts, interest on disbursements, etc, and court approval, Gilardi would be willing to pay with aggregate wires.

Gilardi embraces electronic filing but needs to marry up the court requirements for due process and processing. The environment will never be all electronic as individual filers still send paper.

4. Claim rejection process

a. Can data be sent out in single file (e.g. Excel) vs. single paper rejects for each claimant?

Question (Gail Richardson – Wells Fargo) Could Gilardi, as other claims administrators do, print onto the check that the funds need to be returned to the fund if they cannot be paid?

Answer (Peter): Yes. Will you send back with interest?

Answer (Gail): No, but our short turnaround time means little interest is accumulated.

5. How to achieve and “single claim per claimant” process – what is Gilardi’s take on how custodians should manage closed accounts?

6. Are there any established lines of communication between the various Claims Administrator offices? Could the Class Actions Focus Group help facilitate something to further Best Practices?

Many participants as well as claims administrators and litigants will be attending The McGovern Group meeting on the 24th and 25th of September in New York City.

Closing

Gilardi appreciated the difficult position the custodians are in and thanks all for the call and the openness of the discussion. Gilardi is always working to improve.