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Attorneys for Diane and Roger Peskin, Maureen Ebel, and the parties listed on Exhibit A hereto

**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

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|------------------------------|---|-------------------------------------|
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| | : | |
| SECURITIES INVESTOR | : | |
| PROTECTION CORPORATION, | : | SIPA LIQUIDATION |
| | : | (Substantively Consolidated) |
| Plaintiff, | : | Adv. Pro. No. 08-01789 (BRL) |
| | : | |
| v. | : | |
| | : | <u>NOTICE OF APPEAL</u> |
| BERNARD L. MADOFF INVESTMENT | : | <u>AND PROTECTIVE MOTION</u> |
| SECURITIES LLC, | : | <u>FOR LEAVE TO APPEAL</u> |
| | : | |
| Defendant. | : | |
| | : | |
| ----- | X | |
| | : | |
| In re: | : | |
| | : | |
| BERNARD L. MADOFF, | : | |
| | : | |
| Debtor. | : | |
| | : | |
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PLEASE TAKE NOTICE that Diane and Roger Peskin, Maureen Ebel, and a large group of Customers listed on Exhibit A hereto (“Appellants”) hereby appeal under 28 U.S.C. § 158(d)(2) to the United States Court of Appeals for the Second Circuit from the Order entered by the Bankruptcy Court for the Southern District of New York in the above-referenced proceeding on March 8, 2010 (the “Order,” annexed as Exhibit B hereto),

pursuant to the Certification of Net Equity Order issued by the Bankruptcy Court on March 8, 2010 (the “Certification,” annexed as Exhibit C hereto).

PLEASE TAKE FURTHER NOTICE that, in the event that the United States Court of Appeals for the Second Circuit does not authorize the appeal, Appellants in the alternative hereby appeal the Order under 28 U.S.C. § 158(a)(1) to the United States District Court for the Southern District of New York.

In the event that it is necessary, this Notice should be deemed a motion for leave to appeal under 28 U.S.C. § 158(d)(2) to the United States Court of Appeals for the Second Circuit or under 28 U.S.C. § 158(a)(3) to the United States District Court for the South District of New York for the reasons set forth in the Certification, the Order, and the Memorandum Decision dated March 1, 2010 granting the Trustee’s motion for the Order.

The names of all parties to the Order appealed from and the names, addresses, and telephone numbers of their respective counsel are as follows:

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Dated: New York, New York
March 19, 2010

s/s *Helen Davis Chaitman*

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Attorneys for Diane and Roger Peskin, Maureen Ebel, and the parties listed on Exhibit A hereto.

EXHIBIT A

Customers represented by Becker & Poliakoff, LLP

Diane and Roger Peskin, Maureen Ebel, Alan and Rita English, Michael and Joan Epstein, Donald A. Benjamin, David Wingate, Sandra Busel Revocable Trust, Joel Busel Revocable Trust, Martin Lifton, Robert F. Ferber, Armand Lindenbaum, Linda Waldman, Mike Stein, Sondra and Norman Feinberg, ChaitmaniSchwebel LLC, Ronald Gene Wohl Credit Shelter Trust, Theresa Rose Ryan, Thomas A. Sherman, Barbara and Robert J. Vogel, Howard Israel, Nancy Feldman, David and Susan Glodstein, Brad E. Avergon and Cynthia B. Avergon and Ronnie Sue Ambrosino, Gross Associates, Sanford Harwood, Stephen and Leslie Ehrlich, Dara Norman Simons, Hannah P. Norman Revocable Trust, Paul Allen, Allen Family Trust, Cynthia & Ted Arenson, Jacqueline and Robert Avergon, William I. Bader, Berkowitz-Blau Foundation, Inc., Morrey Berkwitz, Roz & Hemy Bessel, Michael Brillante, Anna Cohn, Russell Dusek, Sabra and Marvin Englebardt Retirement Plan, Alan & Ritz English, Mark Feldman, Leonard Forrest Revocable Trust, Barbara & Richard Gaba, Sol Ganes, Kuntzman Family LLC, Carla Ginsburg, Sidney and Elaine Glodstein, Leslie Goldsmith, Susan Greer, WDG Associates Inc. Retirement Trust, Robert Halio, Estelle Harwood Family LP, Sanford Harwood Family LP, Toby Harwood, Annette Jungreis Trust, Irving Jungreis Trust, Saulius Kajota, Carol Kamenstein, Sloan Kamenstein, Tracy Kamenstein, Ken & Myrna Kohl, Miller Partnership, Miller Trust Partnership, Mishkin Family Trust, Grace Mishkin, William Mishkin, Carol & Stanley Nelson, Martin R. Harnick, Steven Norton, Preffer Family Trust, Realty Negotiators Inc. Defined Benefit Plan, Marvin and Roberta Plateis, Alan & Linda Rosenthal, Helen Saren-Lawrence, Elaine Schaffer Revocable Trust, Elaine Ruth Schaffer, Alice Schindler, Jeffrey Shankman, Herbert Silvera, Shirley Stone, Gunther Unflat, Carla Szymanski Revocable Trust, Whitman Partnership, Wohl George Partners LP, Robert Yaffe, Triangle Properties # 39, R. R. Rosenthal Associates.

EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**ORDER (1) UPHOLDING TRUSTEE’S DETERMINATION DENYING CUSTOMER
CLAIMS FOR AMOUNTS LISTED ON LAST CUSTOMER STATEMENT; (2)
AFFIRMING TRUSTEE’S DETERMINATION OF NET EQUITY; AND (3)
EXPUNGING THOSE OBJECTIONS WITH RESPECT TO THE DETERMINATIONS
RELATING TO NET EQUITY**

This matter came before the Court on February 2, 2010 on the motion (the “Motion”) of Irving H. Picard, Esq. (the “Trustee”), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”), and as trustee for the estate of Bernard L. Madoff (“Madoff”), for entry of an order (1) upholding the Trustee’s determinations denying the claims in question for the securities and credit balances listed on the claimants’ last BLMIS customer statement; (2) affirming the Trustee’s “cash in/cash out” determinations of net equity with respect to each customer claim; and (3) expunging the objections to the Trustee’s determinations to the customer claims in question insofar as they relate to net equity; and the Court having considered:

1. That the Trustee's Motion concerns the proper interpretation and application of net equity ("Net Equity"), as that term is defined in section 16(11) of SIPA, 15 U.S.C. § 78lll(11); and
2. That as delineated in the Motion papers, it is the Trustee's position that for purposes of determining customer claims, each BLMIS customer's Net Equity should be determined by crediting the amount of cash deposited by the customer into his BLMIS account, less any amounts already withdrawn by him from his BLMIS customer account (the "Net Investment Method"); and
3. That certain customer claimants ("Objecting Claimants") asserted that Net Equity should be determined on the basis of each claimant's balance as shown on their November 30, 2008 account statement provided by BLMIS ("Final Customer Statements"); and
4. The responses and oppositions filed in this Court to the Motion, as listed in Appendix 1 to the Memorandum Decision Granting Trustee's Motion For An Order (1) Upholding Trustee's Determination Denying Customer Claims For Amounts Listed On Last Customer Statement; (2) Affirming Trustee's Determination Of Net Equity; and (3) Expunging Objections to Determinations Relating To Net Equity ("Net Equity Decision"), dated March 1, 2010.

Due notice of the Motion has been given, and it does not appear that other or further notice need be given, and after a hearing and the proceedings before the Court, and after due

deliberation, having determined the Motion is in the best interests of BLMIS, its creditors and the estate, it is hereby:

ORDERED, that the relief requested in the Motion is granted as set forth in the Net Equity Decision, fully incorporated herein; and it is further

ORDERED, that the Trustee's determination of Net Equity using the Net Investment Method is upheld; and it is further

ORDERED, that each customer's Net Equity with respect to their customer claims in this SIPA liquidation proceeding shall be calculated using the Net Investment Method rather than the balances listed on the Final Customer Statements; and it is further

ORDERED, that the oppositions submitted by the Objecting Claimants, as listed in Appendix 1 of the Net Equity Decision, are overruled; and it is further

ORDERED, that the objections to the determinations of customer claims, as listed on Exhibit A to the Trustee's Motion [Dkt. No. 530], are expunged insofar as those objections are based upon using the Final Customer Statements rather than the Net Investment Method to determine Net Equity; and it is further

ORDERED, that this Court shall retain jurisdiction with respect to the remainder of the claimants' objections in accordance with the order entered by this Court on December 23, 2008 (the "Claims Procedures Order"); and it is further

ORDERED, that the Trustee shall in due course schedule a hearing or hearings regarding the remainder of the claimants' objections in accordance with the Claims Procedures Order; and it is further

ORDERED, that with regard to the Net Equity Dispute, this Order is a final order as that term is defined in 28 U.S.C. § 158(a)(1), and there is no just reason for delay; and it is further

ORDERED, that in view of the factors contained in 28 U.S.C § 158(d)(2)(A)(i) - (iii), this Court will upon appropriate request or motion consider favorably a request to certify a direct appeal to the United States Court of Appeals for the Second Circuit; and it is further

ORDERED, that this Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: New York, New York
March 8, 2010

/s/Burton R. Lifland
HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**COURT'S CERTIFICATION OF NET EQUITY ORDER OF MARCH 8, 2010
FOR IMMEDIATE APPEAL TO THE UNITED STATES COURT OF APPEALS
PURSUANT TO 28 U.S.C. § 158(d)(2)**

The Court having issued its Memorandum Decision Granting Trustee's Motion for an Order (1) Upholding Trustee's Determination Denying Customer Claims for Amounts Listed on Last Customer Statement; (2) Affirming Trustee's Determination of Net Equity; and (3) Expunging Objections to Determinations Relating to Net Equity (the "Net Equity Decision") on March 1, 2010; and having entered an order on March 8, 2010 implementing the Decision (the "Net Equity Order"); and because the Net Equity Decision and Order impact with finality on the interests of the parties to the above-captioned proceeding, the Court, on its own motion, joined by the annexed request of the law firms of Becker & Poliakoff, LLP, Davis Polk & Wardwell LLP, Lax & Neville, LLP, Milberg LLP, and Shearman & Sterling LLP, on behalf of the BLMIS claimants represented by the same, setting forth the bases for certification pursuant to 28 U.S.C. § 158(d)(2), which request the Court treats as a motion for certification; and the United

States Securities & Exchange Commission and the Securities Investor Protection Corporation having indicated that they have no objection to this request; and the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (iii) the legal and factual issues presented establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The relief sought in the request is GRANTED.
2. The Court certifies that an immediate appeal of the Net Equity Order is appropriate because this proceeding involves a matter of public importance, and an immediate appeal may materially advance the progress of this proceeding.
3. The Court therefore certifies the Net Equity Order for immediate appeal to the United States Court of Appeals pursuant to 28 U.S.C. § 158(d)(2).

Dated: New York, New York
March 8, 2010

/s/ Burton R. Lifland
United States Bankruptcy Judge

March 8, 2010

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VIA EMAIL AND FIRST CLASS MAIL

Honorable Burton R. Lifland
United States Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York
One Bowling Green
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Re: *Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC*, 08-1789 (BRL) (Substantively Consolidated)

Dear Judge Lifland:

Baker & Hostetler LLP, as counsel to Irving H. Picard (“Trustee”), the Trustee for the substantively consolidated liquidation proceedings of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and Bernard L. Madoff, and the law firms of Becker & Poliakoff, LLP, Davis Polk & Wardwell LLP, Lax & Neville, LLP, Milberg LLP, and Shearman & Sterling LLP, on behalf of the BLMIS claimants represented by the same, jointly write to request that this Court certify its order of March 8, 2010 (the “Net Equity Order”), granting the Trustee’s motion (“Motion”) for an order: (1) upholding the Trustee’s determinations denying the claims in question for the securities and credit balances listed on the claimants’ last BLMIS customer statement; (2) affirming the Trustee’s “cash in/cash out” determinations of net equity with respect to each customer claim; and (3) expunging the objections to the Trustee’s determinations to the customer claims in question insofar as they relate to net equity, for immediate appeal to the United States Court of Appeals for the Second Circuit, pursuant to 28 U.S.C. § 158(d)(2).

The Trustee's Motion sought a final order to be issued by this Court relating to the proper interpretation and application of net equity ("Net Equity"), as that term is defined in section 16(11) of SIPA, 15 U.S.C. § 78fff(11). As delineated in the Motion, it is the Trustee's position that for purposes of determining customer claims, each BLMIS customer's Net Equity should be determined by crediting the amount of cash deposited by the customer into his BLMIS account, less any amounts already withdrawn by him from his BLMIS customer account (the "Net Investment Method"). Certain customer claimants asserted that Net Equity should be determined on the basis of each claimant's balance as shown on their November 30, 2008 account statement provided by BLMIS ("Final Customer Statements").

After notice and a hearing, and after due consideration of all responses and oppositions filed in this Court to the Motion, as listed in Appendix 1 to the Memorandum Decision Granting Trustee's Motion For An Order (1) Upholding Trustee's Determination Denying Customer Claims For Amounts Listed On Last Customer Statement; (2) Affirming Trustee's Determination Of Net Equity; and (3) Expunging Objections to Determinations Relating To Net Equity ("Net Equity Decision"), dated March 1, 2010, this Court entered the Net Equity Order on March 8, 2010, fully incorporating therein the Net Equity Decision.

Under the terms of 28 U.S.C. § 158(d)(2), a bankruptcy court may certify an order for immediate appeal to a circuit court of appeal where the order "involves a matter of public importance," or where an appeal from the order "may materially advance the progress of the case." 28 U.S.C. § 158(d)(2)(A)(i) and (iii). Certification is mandatory where the Court determines that these circumstances exist. *Id.* § 158(d)(2)(B) ("If the bankruptcy court . . . determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists . . . then the bankruptcy court shall make the certification described in subparagraph (A)").

As the Court is well-aware, this SIPA liquidation proceeding arises out of the infamous and massive Ponzi scheme perpetrated by Bernard L. Madoff. Under any calculation, billions of dollars are at stake, and over 15,000 customer claims have been filed in this liquidation. See Net Equity Decision, at 5. The calculation of Net Equity vis-à-vis each customer claim dictates the distribution, if any, that each customer will receive from the fund of customer property under section 8(c)(1)(B) of SIPA, 15 U.S.C. § 78fff-2(c)(1)(B), as well as each customer's entitlement to receive an advance from SIPA against that payment from the fund of customer property. Thus, the result of the Net Equity Dispute impacts the determination and calculation of every customer claim filed in this proceeding.

As this liquidation proceeding affects a large number of customer claimants, and has generated Congressional hearings, proposed amendments to the United States Code, and sustained press coverage, we submit that this proceeding, and particularly the Net Equity Dispute, is a matter of public importance appropriate for certification to the Court of Appeals.

Moreover, as described above, whether the Trustee has properly determined all customer claims in this proceeding is a question that hinges on the Net Equity Dispute. All parties – both customer claimants and the Trustee – would benefit from the speediest resolution of this issue consistent with the law. The entry of a final, non-appealable order regarding the Net Equity Dispute will provide finality and closure to those who were victimized as a result of Madoff's fraudulent scheme. Under these circumstances, an immediate appeal from the order will materially advance the progress of the case, making certification appropriate. See 28 U.S.C. § 158(d)(2)(A)(iii).

The United States Securities & Exchange Commission and the Securities Investor Protection Corporation have indicated that they have no objection to this request.

Accordingly, we respectfully request that this appeal be certified to the Court of Appeals pursuant to 28 U.S.C. § 158(d)(2)(A).

Respectfully submitted,

/s/ David J. Sheehan

David J. Sheehan

/s/ Helen Chaitman
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/s/ Karen Wagner
Davis Polk & Wardwell LLP

/s/ Brian Neville
Lax & Neville, LLP

/s/ Matthew Gluck
Milberg LLP

/s/ Stephen Fishbein
Shearman & Sterling LLP

cc: Irving H. Picard, Esq.
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