

EXHIBIT A

Diane and Roger Peskin, 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 and Ted Arenson, Jaqueline and Robert Avergon, William I. Bader, Berkowitz-Blau Foundation, Inc., Morrey Berkwitz, Roz and Hemy Bessel, Michael Brillante, Anna Cohn, Russel Dusek, Sabra and Marvin Englehardt Retirement Plan, Alan and Ritz English, Mark Feldman, Leonard Forrest Revocable Trust, Barbara and Richard Gaba, Sol Ganes, Kuntzman Family LLC, Carla Ginsburg, Sidney and Elaine Glodstein, Leslie Goldsmith, Susan Greer, WDG Associates Inc. Retirement Trust, Robert Hadio, Estelle Harwood Family LP, Sanford Harwood Family LP, Toby Harwood, Annette Jungreis Trust, Saulius Kajota, Carol Kamenstein, Sloan Kamenstein, Tracy Kamenstein, Ken and Myrna Kohl, Miller Partnership, Miller Trust Partnership, Mishkin Family Trust, Grace Mishkin, William Mishkin, Carol and Stanley Nelson, Martin R. Harnick, Steven Norton, Preffer Family Trust, Realty Negotiators Inc. Defined Benefit Plan, Marvin and Roberta Plateis, Alan and 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, and R.R. Rosenthal Associates

EXHIBIT B

Hearing Date: February 18, 2010 at 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-1789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

**ORDER PURSUANT TO SECTION 105(a) OF THE
BANKRUPTCY CODE AND RULES 2002 AND 9019 OF THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE APPROVING AN AGREEMENT BY AND
AMONG THE TRUSTEE AND JEANNE LEVY-CHURCH AND FRANCIS N. LEVY**

Upon the motion (the “Motion”)¹ of Irving H. Picard, Esq. (the “Trustee”) as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC and Bernard L. Madoff, seeking entry of an order, pursuant to sections 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, approving the agreement, by and among the Trustee, on the one hand, and Jeanne Levy-Church and Francis N. Levy, on the other hand, in substantially the form annexed to the Motion (the “Agreement”); and it appearing that due and sufficient notice has

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

been given to all parties in interest as required by Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure; and the Court having considered the Affidavit of Irving Picard in support of the Motion; and it further appearing the relief sought in the Motion is appropriate based upon the record of the hearing held before this Court to consider the Motion; and it further appearing that this Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and after due deliberation; and sufficient cause appearing therefor; it is

ORDERED, that the Motion is granted in its entirety; and it is further

ORDERED, that the Agreement between the Trustee on the one hand and Jeanne Levy-Church and Francis N. Levy on the other hand is hereby approved and authorized; and it is further

ORDERED, that the Trustee, Jeanne Levy-Church and Francis N. Levy shall each comply with and carry out the terms of the Agreement.

Dated: New York, New York
February 18, 2010

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

EXHIBIT C

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*Attorneys for Irving H. Picard, Trustee
for the Substantively Consolidated SIPA
Liquidation of Bernard L. Madoff Investment
Securities LLC and Estate of Bernard L. Madoff*

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

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

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

SIPA LIQUIDATION

(Substantively Consolidated)

COMPLAINT

REDACTED

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

JPMORGAN CHASE & CO., JPMORGAN
CHASE BANK, N.A., J.P. MORGAN
SECURITIES LLC, and J.P. MORGAN
SECURITIES LTD.,

Defendants.

Adv. Pro. No. 10-04932 (BRL)

should have seen tens of billions of dollars—nearly all of the IA Business’s assets under management—moved into T-bills, as that was part of BLMIS’s purported investment strategy.

221. Instead, what JPMC saw was massive outflows of money that were in no way linked to customer accounts or stock and options trading. Money would come into the 703 Account as customers invested additional funds with BLMIS. An overwhelming majority of funds would then go directly back out to customers in the form of redemptions. Any balance that remained in the 703 Account was invested in short-term securities such as overnight sweeps, commercial paper, and certificates of deposit.

222. JPMC also faced regular account activity that would have been suspicious regardless of the type of business JPMC thought Madoff was running. The 2000 OCC BSA/AML Handbook identified numerous “red flags” that financial institutions needed to consider as part of their transaction monitoring procedures. These red flags included: (a) unexplained repetitive or unusual patterns of activity; (b) frequent large dollar transactions without corresponding explanations as to how those funds would be utilized; (c) spikes in customer activity with little or no explanation; and (d) wire activity with offshore banking centers or financial secrecy havens. The 703 Account exhibited all of these types of transactions, and exhibited them repeatedly.

223. In addition, much of this account activity occurred between BLMIS and other JPMC customers. Most notably, the party transacting with BLMIS most often and in the largest dollar amount, receiving almost \$76 billion in payments from the 703 Account between December 1998 and September 2005, was JPMC’s long-time Private Bank customer and IA Business customer, REDACTED [BLMIS/JPMC Customer 1].

Account Activity Red Flags

224. *Repetitive Transactions:* BLMIS frequently engaged in repeated transactions with the same parties, often on the same days, with no obvious purpose. For example, during 2002, BLMIS initiated outgoing transactions to ^{REDACTED} [BLMIS/JPMC Customer 1] in the precise amount of \$986,301 hundreds of times—318 separate times, to be exact. These highly unusual transactions were often sent multiple times on a single day.

225. As another example, from December 2001 to March 2003, the total monthly dollar amounts coming into the 703 Account from ^{REDACTED} [BLMIS/JPMC Customer 1] were almost always equal to the total monthly dollar amounts going out of the 703 Account to ^{REDACTED} [BLMIS/JPMC Customer 1]. There was no clear economic purpose for such repetitive transactions that had no net impact on ^{REDACTED} [BLMIS/JPMC Customer 1's] account at BLMIS.

226. *Large Dollar Transactions:* The 703 Account reflected a pattern of large dollar transactions. Between 1998 and 2008, BLMIS transferred \$84 billion out of the 703 Account to just four customers. These transactions represented over 75% of the wires and checks that flowed out of the 703 Account. It also was typical for BLMIS, through the 703 Account, to enter into individual transactions with the BLMIS feeder funds for hundreds of millions of dollars.

227. *Spikes in Activity:* The 703 Account showed occasional spikes in overall activity, which should have prompted further investigation by JPMC. Shortly before the beginning of the credit crisis, over the period beginning in the first quarter of 2006 and ending in the first quarter of 2007, there was a significant increase in the total dollar amount transacted in the 703 Account. This increase in activity included a significant increase not only in third party wires but also in book transfer activity. During this period, the average dollar amount of each transaction increased by over \$60 million, from \$17 million to \$78 million.

228. There was also a downward spike in activity between the 703 Account and ^{REDACTED} [BLMIS/JPMC Customer 1's] account at the Private Bank after December 2001. In December 2001 alone, BLMIS engaged in approximately \$6.8 billion worth of transactions with ^{REDACTED} [BLMIS/JPMC Customer 1]. Shortly thereafter, ^{REDACTED} [BLMIS/JPMC Customer 1's] activity with the 703 Account decreased dramatically.

229. *Wire Activity with Offshore Entities:* Incredible spikes in the 703 Account's overall activity were accompanied by incredible spikes in offshore activity as well. Between 2004 and 2008, the dollar amount and volume of the 703 Account's international wire transfers with high and medium risk jurisdictions increased 83% and 67%, respectively.

230. *Check Activity:* In addition, many transactions in the 703 Account involved handwritten checks totaling hundreds of millions of dollars in a single day. This is not only unusual on its face, but it is particularly unusual given that BLMIS would issue multiple checks on the same day to the same customer. At the very least, this activity should have prompted a check-kiting investigation, which undoubtedly would have revealed more suspicious behavior.

231. In addition, the majority of ^{REDACTED} [BLMIS/JPMC Customer 1's] transactions with the 703 Account were conducted by check. For example, in December 2001, the 703 Account received checks from ^{REDACTED} [BLMIS/JPMC Customer 1], each in the amount of \$90 million, on a daily basis—a pattern of activity with no identifiable business purpose.

232. *Private Banking:* JPMC should have also been monitoring transactions from the perspective of certain JPMC customers that were also BLMIS customers. A number of BLMIS customers held accounts at JPMC's Private Bank, including ^{REDACTED} [BLMIS/JPMC Customer 1]. Private banking has long been considered a high risk activity. That is because private bank accounts generate lucrative fees, which provide an incentive for private bankers to ignore client

activity that is illegal or violates internal bank policy. Private banking has frequently served as a vehicle for money laundering, and particularly money laundering involving cross-border wire transfers.

233. Thus, when JPMC saw billions of dollars of transfers between the 703 Account and accounts held at JPMC's Private Bank, it should have been highly suspicious. Given that those accounts were held by JPMC, the bank was in a perfect position to investigate. It had only to review its internal account records to determine whether there was a legitimate explanation for the transaction history.

234. *Automated Account Monitoring:* The 703 Account's unusual activity should have triggered JPMC's automated account monitoring system as well. REDACTED

235. JPMC's transaction monitoring system appears to have been critically flawed in that the formula JPMC programmed into the system failed to issue alerts even when analyzing highly suspicious activities. REDACTED

However, even though the formula identified many instances of suspicious activity in the 703 Account, the system almost never issued alerts. This prompted compliance personnel at JPMC to ask, after Madoff's arrest, "Why didn't the DDA Account (xxxxx1703) alert . . . ?"

236. Between June 2005 and September 2008,

REDACTED

Yet,

during that period, only one account alert was generated.

237. Taking March 2008 as an example, during that month there were approximately \$1.1 billion in transactions in the 703 Account. This value was so high REDACTED

Remarkably, JPMC's transaction monitoring system noted the unusual activity but did not consider it unusual enough to warrant an alert. No alert was generated in March 2008.

JPMC Had a Duty to Investigate Suspicious Activity in BLMIS's Account

238. Once suspicious activity is identified, a bank must further investigate to determine whether there could be a legitimate explanation for the activity or, rather, if it is indicative of illegal activity. REDACTED

Upon information and belief, in the face of repeated indications of suspicious transaction activity in the 703 Account, as well as comments from individuals within JPMC regarding the legitimacy of BLMIS's operations, JPMC never conducted any serious investigation of the activity in the 703 Account or filed a SAR with the United States government.

239. Despite the frequency with which transactions in the 703 Account were far outside the normal levels, the system issued only **a single account alert.** REDACTED

REDACTED

240.

REDACTED

241. Finally, the reviewer noted that he could not locate a KYC file for BLMIS and, regardless, concluded the investigation. REDACTED

242. Even when REDACTED [JPMC Employee 1] raised the issue in 2007 that Madoff was operating a Ponzi scheme, no one at JPMC appears to have looked at the transactions in the 703 Account, even though it was a JPMC account. BLMIS's Client Relationship Manager and account sponsor, REDACTED [JPMC Employee 9], learned of REDACTED [JPMC Employee 1's] claim, but took no action whatsoever.

243. Not only did JPMC have access to BLMIS's account history, but JPMC also had access to the bank accounts of a number of BLMIS customers, and was thus provided with even more information indicating fraud. In fact, JPMC had an extremely close relationship with one of BLMIS's largest and most active customers, REDACTED [BLMIS/JPMC Customer 1].

244. REDACTED [BLMIS/JPMC Customer 1] was a client of JPMC's Private Bank for over REDAC years. REDACTED [BLMIS/JPMC Customer 1] had close business relationships with senior executives at JPMC's predecessor banks, as well as at JPMC. These individuals included

REDACTED

REDACTED

245. REDACTED [BLMIS/JPMC Customer 1] had two Premier Checking accounts with JPMC's Private Bank: account XXX-XXXX^{REDACTED} and account XXX-XXXX^{REDACTED}

246. JPMC was acutely aware of REDACTED [BLMIS/JPMC Customer 1's] close relationship with Madoff, identifying Madoff as REDACTED [BLMIS/JPMC Customer 1's] REDACTED trader," who had helped increase REDACTED [BLMIS/JPMC Customer 1's] wealth from \$180 million in 1986 to \$1.5 billion in 1998.

247. Upon information and belief, JPMC never meaningfully investigated the connection between Madoff and REDACTED [BLMIS/JPMC Customer 1]. The activity in REDACTED [BLMIS/JPMC Customer 1's] account confirmed that there was no legitimate explanation for the suspicious transactions in the 703 Account.

248. Instead of investigating these transactions, JPMC was primarily concerned about maintaining a relationship with REDACTED [BLMIS/JPMC Customer 1] and Madoff and maintaining a role in REDACTED finances REDACTED

upon information and belief, JPMC prioritized its relationships with REDACTED [BLMIS/JPMC Customer 1] and Madoff over its compliance with regulations that required banks to monitor customer accounts.

JPMC Had a Duty to Take Action

249. Suspecting that illegal activity was occurring, JPMC had a duty to take action. JPMC should have notified Madoff and then closed the account.

EXHIBIT D

Media Contact:
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PRESS RELEASE OF IRVING H. PICARD

MADOFF TRUSTEE ANNOUNCES SETTLEMENT OF \$220 MILLION

NEW YORK, NY – Irving H. Picard, the SIPA Trustee for the liquidation of the substantively consolidated estates of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and Bernard L. Madoff, announced that he has entered into an agreement with Jeanne Levy-Church and Francis N. Levy to resolve claims that BLMIS has against members of the Levy family and certain related entities. Under the agreement, the Levys will pay the Trustee \$220 million, the amount demanded by the Trustee, to resolve such claims. This settlement was reached without the need for the Trustee to commence litigation against the Levys since the Levys voluntarily came forward and approached the Trustee about the matter. With this settlement, the Trustee has collected an amount approaching \$1.5 billion for the benefit of the victims of Madoff’s fraud. The Trustee was represented by his firm, Baker Hostetler, and the Levys were represented by Munger Tolles & Olson.

“I am very pleased that the Levys came to us to discuss the claims that BLMIS has against them and that they agreed to return to BLMIS \$220 million, the amount we requested, for the benefit of the victims of Madoff’s fraud. The Levys have acted honorably and are to be commended. We hope that others will follow their example,” said Mr. Picard.

The Trustee filed a motion with the Bankruptcy Court today seeking approval for the settlement. The Bankruptcy Court will hold a hearing on the settlement on February 18, 2010.

EXHIBIT E

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Hearing Date: February 18, 2010 at 10:00 a.m.

Objection Deadline: February 11, 2010

*Attorneys for Irving H. Picard, Esq., Trustee
for the Substantively Consolidated SIPA
Liquidation of Bernard L. Madoff
Investment Securities LLC and Bernard L.
Madoff*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-1789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

**NOTICE OF MOTION FOR ENTRY OF ORDER PURSUANT TO
SECTION 105(a) OF THE BANKRUPTCY CODE AND RULES 2002 AND 9019 OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE APPROVING AN
AGREEMENT BY AND AMONG THE TRUSTEE AND JEANNE LEVY-CHURCH
AND FRANCIS N. LEVY**

Irving H. Picard (the "Trustee"), as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC and Bernard L. Madoff, by and through his undersigned counsel, will move before the Honorable Burton R. Lifland, United States Bankruptcy Judge, at the United States Bankruptcy Court, the Alexander Hamilton Customs House, One Bowling Green, New York, New York 10004, on February 18, 2010 at 10:00 a.m., or as soon thereafter as counsel may be heard, seeking entry of an order, pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure approving that certain Agreement by and among the Trustee, on the one hand, and Jeanne Levy-Church and Francis N. Levy, on the other hand, as more particularly set forth in the Motion annexed hereto (the "Motion").

PLEASE TAKE FURTHER NOTICE that written objections to the Motion must be filed with the Clerk of the United States Bankruptcy Court, One Bowling Green, New York, New York 10004 by no later than **5:00 p.m. on February 11, 2010** (with a courtesy copy delivered to the Chambers of the Honorable Burton R. Lifland) and must be served upon (a) Baker & Hostetler LLP, counsel for the Trustee, 45 Rockefeller Plaza, New York, New York 10111, Attn: Marc E. Hirschfield and (b) Munger, Tolles & Olson LLP, 355 S. Grand Ave., 35th Floor, Los Angeles, CA 90071, Attn: Ronald L. Olson. Any objections must specifically state the interest that the objecting party has in these proceedings and the specific basis of any objection to the Motion.

Dated: New York, New York
January 27, 2010

Respectfully submitted,

s/Marc E. Hirschfield

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Trustee for the Substantively Consolidated
SIPA Liquidation of Bernard L. Madoff
Investment Securities LLC and Bernard L.
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Hearing Date: February 18, 2010 at 10:00 a.m.

Objection Deadline: February 11, 2010

*Attorneys for Irving H. Picard, Esq., Trustee
for the Substantively Consolidated SIPA
Liquidation of Bernard L. Madoff
Investment Securities LLC and Bernard L.
Madoff*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-1789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**MOTION FOR ENTRY OF ORDER PURSUANT TO SECTION 105(a)
OF THE BANKRUPTCY CODE AND RULES 2002 AND 9019
OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE
APPROVING AN AGREEMENT BY AND AMONG THE
TRUSTEE AND JEANNE LEVY-CHURCH AND FRANCIS N. LEVY**

TO: THE HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE:

Irving H. Picard (the "Trustee"), as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") and Bernard L. Madoff ("Madoff," and together with BLMIS, collectively, the "Debtors"), by and through his undersigned counsel, submits this motion (the "Motion") seeking entry of an order, pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving an agreement (the "Agreement")¹ by and among the Trustee, on the one hand, and Jeanne Levy-Church and Francis N. Levy (the "Levys"), on the other hand, and, in support thereof, the Trustee respectfully represents as follows:

BACKGROUND

1. On December 11, 2008 (the "Filing Date"),² the Securities and Exchange Commission ("SEC") filed a complaint in the United States District Court for the Southern District of New York (the "District Court") against the Debtors (Case No. 08 CV 10791). The complaint alleged that the Debtors engaged in fraud through investment advisor activities of BLMIS.

¹ The form of Agreement is annexed hereto as Exhibit "A."

² Section 7811(7)(B) of the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.* ("SIPA") states that the filing date is "the date on which an application for a protective decree is filed under 78eee(a)(3)," except where the debtor is the subject of a proceeding pending before a United States court "in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term 'filing date' means the date on which such proceeding was commenced." Section 7811(7)(B). Thus, even though the Application for a protective decree was filed on December 15, 2008, the Filing Date in this action is on December 11, 2008.

2. On December 15, 2008, pursuant to section 78eee(a)(4)(A) of SIPA, the SEC consented to a combination of its own action with an application of the Securities Investor Protection Corporation ("SIPC"). Thereafter, pursuant to section 78eee(a)(3) of SIPA, SIPC filed an application in the District Court alleging, inter alia, that BLMIS was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protection afforded by SIPA.

3. On that date, the District Court entered the Protective Decree, to which BLMIS consented, which, in pertinent part:

- (i) appointed the Trustee for the liquidation of the business of BLMIS pursuant to section 78eee(b)(3) of SIPA;
- (ii) appointed Baker & Hostetler LLP as counsel to the Trustee pursuant to section 78eee(b)(3) of SIPA; and
- (iii) removed the case to this Court pursuant to section 78ccc(b)(4) of SIPA.

4. At a plea hearing (the "Plea Hearing") on March 12, 2009 in the criminal action filed against him by the United States Attorney's Office for the Southern District of New York, Madoff pled guilty to an 11-count criminal information, which counts included securities fraud, money laundering, theft and embezzlement. At the Plea Hearing, Madoff admitted that he "operated a Ponzi scheme through the investment advisory side of [BLMIS]." (Plea Hr'g Tr. at 23:14-17.) On June 29, 2009, Madoff was sentenced to a term of imprisonment of 150 years.

5. On April 13, 2009, an involuntary bankruptcy petition was filed against Madoff. On June 9, 2009, this Court entered an order substantively consolidating the Chapter 7 estate of Madoff into the BLMIS SIPA proceeding.

THE CLAIMS AGAINST THE LEVYS

6. Norman F. Levy ("Mr. Levy") was a New York City commercial real

estate executive who began investing with BLMIS in the mid-1970's on behalf of himself, members of his family and certain trusts. Mr. Levy continued to invest over the years, until his death in September 2005. Prior to his death, Mr. Levy designated Madoff as an executor of his estate and upon Mr. Levy's death, Madoff was vested with power to make unilateral investment decisions regarding the estate's non-real estate assets. After Mr. Levy's death, Madoff, acting as executor, transferred more than \$250 million to BLMIS from Mr. Levy's estate, essentially "stealing" this amount from Mr. Levy's heirs and beneficiaries.

7. Prior to his death, Mr. Levy established a number of accounts at BLMIS in his name, the names of his children, and for family trusts and charitable trusts, including the Betty & Norman F. Levy Foundation (the "Foundation") (collectively, the "Levy BLMIS Account Holders"). During the six years prior to the Filing Date, the Levy BLMIS Account Holders withdrew an aggregate of approximately \$305 million in excess of the amount of deposits made into such accounts (the "Six Year Transfers").³ Of the \$305 million, approximately \$84 million (the "Foundation Transfers") was withdrawn by the Foundation, which maintained its own account at BLMIS that was separate and distinct from the accounts of the other Levy BLMIS Account Holders. The Levys have advised the

³ At the time the Levys approached the Trustee and began discussions on a resolution of the Trustee's potential claims against the Levy BLMIS Account Holders, the Trustee had only identified account statements for the Levy BLMIS Account Holders dating back to 1995. The amount of the Six Year Transfers, and the other numbers set forth herein, represent amounts based on the data available to the Trustee at that time. The Trustee has since located and analyzed microfilm found at BLMIS's offices that provides additional account history for, among others, the Levy BLMIS Account Holders. Because the Trustee's settlement demand to the Levys was based on the older account data, and because the Trustee and the Levys were close to a settlement at the time that the additional account information became available, the Trustee determined that it would not be appropriate to make an additional demand of the Levys. The Trustee also understands that the Levys may be uncollectible for a judgment based upon the more complete account data. Accordingly, proceeding with litigation would not necessarily have yielded a higher return than the settlement contained in the Agreement.

Trustee that all of the money withdrawn by the Foundation was donated to charitable causes, that it has no significant remaining assets, and that it is now winding down its activities.

8. The Trustee believes that the Six Year Transfers are recoverable. The Trustee believes that, of the Six Year Transfers, certain transfers made within two years prior to the Filing Date are fraudulent conveyances, recoverable by the Trustee pursuant to sections 548 and 550 of the Bankruptcy Code. See section 78fff-2(c)(3) of SIPA. Pursuant to these sections, a trustee may avoid and recover, for the benefit of the estate, any transfer of an interest of the debtor in property made by the debtor (i) with actual intent to hinder, delay, or defraud an entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; and (ii) the debtor was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation. 11 U.S.C. §§ 548 and 550.

9. Applying these sections of the Bankruptcy Code to the instant case, it is undisputed that Madoff intended to defraud the investors of BLMIS, as he admitted to doing so at the Plea Hearing. *See* Plea Hr'g Tr. 23:20-21. There is also ample evidence to show that BLMIS was insolvent at all times relevant hereto. In fact, the liabilities of BLMIS were billions of dollars greater than its assets.

10. The Trustee has also asserted that the Levys may be liable to the BLMIS estate under section 544(b) and 550 of the Bankruptcy Code and the New York Uniform Fraudulent Conveyance Law (New York Debtor and Creditor Law §§ 270 – 281). See section 78fff-2(c)(3) of SIPA. Section 544(b) of the Bankruptcy Code allows a trustee to avoid a transfer that is voidable under state law. The New York Uniform Fraudulent Conveyance Law provides a six year look-back period for fraudulent transfers.

SETTLEMENT DISCUSSIONS WITH THE LEVYS

11. In the Spring of 2009, the Levys, through their counsel, approached the Trustee to try to reach an agreement with the Trustee on the Levy BLMIS Account Holders' potential liability to the Trustee. While the Levys informed the Trustee that they dispute that they or the other Levy BLMIS Account Holders had any liability to the Trustee, the Levys nevertheless engaged in good faith negotiations with the Trustee that yielded the settlement set forth in the Agreement. Throughout the discussions, the Trustee found the Levys to be forthright and sincere in their desire to "do the right thing" to negotiate a return of the fictitious profits that the Trustee had calculated the Levy BLMIS Account Holders received from BLMIS. The Trustee had the opportunity to investigate the circumstances surrounding Mr. Levy's investment with BLMIS and whenever the Trustee made inquiry of the Levys, the Trustee received answers from them to his satisfaction. The Trustee appreciates the manner in which the Levys cooperated with him to obtain information he needed to arrive at the settlement set forth in the Agreement, and the Trustee hopes that other BLMIS customers will come forward, follow suit, and similarly engage in cooperative and candid settlement discussions with him.

12. The Trustee believes that the Six Year Transfers made to each of the Levy BLMIS Account Holders are recoverable pursuant to Bankruptcy Code provisions and state law.⁴ As part of the settlement discussions, the Levys informed the Trustee that prior

⁴ The Levys have informed the Trustee that they dispute the legal and factual bases of liability for some of the withdrawals. In particular, the Levys contend: that they do not bear any liability for their good-faith withdrawals made prior to two years before the Filing Date; that withdrawals from their Levy BLMIS Accounts were comprised of invested principal and investment earnings to which they are legally entitled as opposed to fictitious profits; and that the account balances for the Levy BLMIS Accounts were real as of December 31, 1991. Nevertheless, the Levys

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to the Filing Date, the Foundation had contributed the funds it received from BLMIS to various charitable causes and that the Foundation has no remaining significant assets. Accordingly, given the inability to pay any judgment against it, the Trustee has determined not to pursue recovery in respect of amounts withdrawn by the Foundation.⁵ Upon making this determination, the Trustee demanded that the Levys return to BLMIS all other net amounts withdrawn by the Levy BLMIS Account Holders within the six years of the Filing Date, i.e., \$220 million. The Levys have agreed to pay the amount of \$220 million in full and final settlement of all claims under sections 544(b), 547, 548 and 550 of the Bankruptcy Code, and any other claims of the Trustee or the BLMIS estate against the Levys.

THE AGREEMENT

13. The principal terms and conditions of the Agreement are generally as follows (as stated, the form of Agreement is attached as Exhibit "A" and should be reviewed for a complete account of its terms):⁶

- At Closing, the Levys shall pay to the Trustee for the benefit of the fund of customer property, the sum of \$220,000,000.00, which is nearly one hundred percent of the amount demanded from the Levys by the Trustee, and which amount the Trustee believes equals the amounts transferred to or for the benefit of the Levys and their family members in the six years prior to the Filing Date (minus the charitable contributions discussed above).

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wish to settle all disputes with the Trustee, and under the Agreement, they do so without admitting liability.

⁵ The Trustee reserves the right to engage in discussions with the charities that received money from the Foundation about returning to the Trustee amounts they received that constitute customer property.

⁶ Terms not otherwise defined in this section shall have the meaning ascribed in the Agreement. In the event of any inconsistency between the summary of terms provided in this section and the terms of the Agreement, the Agreement shall prevail.

- Upon payment of the above-referenced amount at Closing, the Trustee (a) will release the Levy Releasees (listed in Attachment B to the Agreement) from any and all past, present or future claims or causes of action that are, have been, could have been or might in the future be asserted by the Trustee against any of the Levy Releasees and that are based on, arise out of or relate in any way to the affairs of BLMIS or the Levy BLMIS Accounts; and (b) grant a covenant not to sue to (i) any person related by blood or marriage as of the Closing to any of the Levy Releasees (other than Mr. Levy's former son-in-law) and (ii) any entity in which any of the Levy Releasees held or hold, as of or prior to the Closing, a financial interest, in the case of (i) and (ii) for Avoiding Powers Claims but only to the extent that such person or entity is an immediate or mediate transferee of any of the Levy Releasees under section 550(b) of the Bankruptcy Code.
- Each of the Levy Releasees, through the execution by an authorized representative of a Release Subscription (the form of which is annexed to the Agreement), will release, acquit and absolutely discharge the Trustee and all his agents and BLMIS and its estate from any and all actions or causes of action asserted or unasserted, known or unknown, now existing or arising in the future in any way related to BLMIS.
- The Levys will submit to the Bankruptcy Court's jurisdiction with respect to the SIPA Proceeding and any Avoiding Power Claims.
- The Levys agree to reasonably cooperate with the Trustee in his efforts to recover funds for the BLMIS estate.
- The claims filed by Zeno F. Levy and Titus R. Levy, children of Francis N. Levy and his wife Hallie D. Cohen, will be deemed withdrawn by them.

RELIEF REQUESTED

14. By this Motion, the Trustee respectfully requests that the Court enter an order substantially in the form of the proposed Order annexed hereto as Exhibit "B" approving the Agreement.

LEGAL BASIS

15. Bankruptcy Rule 9019(a) provides, in pertinent part, that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Courts have held that in order to approve a settlement or compromise under

Bankruptcy Rule 9019(a), a bankruptcy court should find that the compromise proposed is fair and equitable, reasonable, and in the best interests of a debtor's estate. In re Ionosphere Clubs, Inc., 156 BR 414, 426 (S.D.N.Y. 1993), accord, 17 F.3d 600 (2d Cir. 1994) (citing Protective Comm. for Index. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968)).

16. The Second Circuit has stated that a bankruptcy court, in determining whether to approve a compromise, should not decide the numerous questions of law and fact raised by the compromise, but rather should "canvass the issues and see whether the settlement 'fall[s] below the lowest point in the range of reasonableness.'" In re W.T. Grant Co., 699 F.2d 599, 608 (2d Cir.), cert. denied sub nom. Cosoff v. Roman, 464 U.S. 822 (1983) (quoting Newman v. Stein, 464 F.2d 689, 693 (2d Cir.), cert. denied sub nom. Benson v. Newman, 409 U.S. 1039 (1972)); accord Nellie v. Shugrue, 165 B.R. 115, 121-22 (S.D.N.Y. 1994); In re Ionosphere Clubs, 156 B.R. at 426; In re Purified Down Prods. Corp., 150 B.R. 519, 522 (S.D.N.Y. 1993) ("[T]he court need not conduct a 'mini-trial' to determine the merits of the underlying litigation"); In re Drexel Burnham Lambert Group, Inc., 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991).

17. In deciding whether a particular compromise falls within the "range of reasonableness," courts consider the following factors:

- (i) the probability of success in the litigation;
- (ii) the difficulties associated with collection;
- (iii) the complexity of the litigation, and the attendant expense, inconvenience, and delay; and
- (iv) the paramount interests of the creditors.

Nellis v. Shugrue, 165 B.R. at 122 (citing In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 292 (2d Cir. 1992), cert. denied, 506 U.S. 1088 (1993)).

18. The bankruptcy court may credit and consider the opinions of the trustee or debtor and their counsel in determining whether a settlement is fair and equitable. See In re Purified Down Prods., 150 B.R. at 522; In re Drexel Burnham Lambert Group, Inc., 134 B.R. at 505. The competency and experience of counsel supporting the settlement may also be considered. Nellis v. Shugrue, 165 B.R. at 122. Finally, the court should be mindful of the principle that “the law favors compromise.” In re Drexel Burnham Lambert Group, Inc., 134 B.R. at 505 (quoting In re Blair, 538 F.2d 849, 851 (9th Cir. 1976)).

19. The Trustee believes that the terms of the Agreement fall well above the lowest point in the range of reasonableness and, accordingly, the Agreement should be approved by this Court. The Agreement resolves all issues regarding the Trustee’s claims against the Levys (the “Claims”) without the need for protracted, costly, and uncertain litigation. (Affidavit of the Trustee in Support of the Motion (the “Picard Affidavit”) ¶ 2. A true and accurate copy of the Picard Affidavit is attached hereto as Exhibit “C.”) Litigating the Claims would undoubtedly be expensive and would require a significant commitment of time by the various professionals involved in the matter.

20. Given the cost and complexities involved in proceeding with litigation, the Trustee has determined that the proposed settlement with the Levys represents a fair compromise of the Claims. As discussed above, the Trustee determined that proceeding against the Foundation was fruitless because of its lack of significant assets and inability to pay any judgment against it. Moreover, under the settlement, the Levys will return to the Trustee the amount that the Trustee demanded from them, \$220,000,000. The Trustee believes that such amount represents nearly one-hundred percent of the amount that the Levy BLMIS Account Holders withdrew from BLMIS during the six-year period before

the filing (using the data available to the Trustee at the time he made the demand). The Agreement also furthers the interests of the customers of BLMIS by adding a substantial amount of money to the fund of customer property now. Id. ¶ 3.

21. In sum, the Trustee submits that the Agreement should be approved for two reasons: (a) to avoid burdensome and expensive litigation; and (b) and because it represents a reasonable compromise of the Claims that benefits the estate and the customers of BLMIS. Accordingly, since the Agreement is well within the “range of reasonableness” and confers a substantial benefit on the estate, the Trustee respectfully requests that the Court enter an Order approving the Agreement.

Notice

22. In accordance with Bankruptcy Rules 2002 and 9019, notice of this Motion has been given to (i) SIPC; (ii) the SEC; (iii) the Internal Revenue Service; (iv) the United States Attorney for the Southern District of New York; and (v) all known creditors of BLMIS. The Trustee shall also serve, by way of the ECF filing that will be made, each person or entity that has filed a notice of appearance in this case. The Trustee submits that no other or further notice need be given and respectfully requests that the Court find that such notice is proper and sufficient.

WHEREFORE, the Trustee respectfully requests entry of an Order substantially in the form of Exhibit “B” granting the relief requested in the Motion.

Dated: New York, New York
January 27, 2010

Respectfully submitted,

s/Marc E. Hirschfield

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
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*Attorneys for Irving H. Picard, Esq.
Trustee for the Substantively Consolidated
SIPA Liquidation of Bernard L. Madoff
Investment Securities LLC and Bernard L.
Madoff*

EXHIBIT A
FORM OF AGREEMENT BETWEEN
TRUSTEE AND THE LEVYS

AGREEMENT

This AGREEMENT, dated as of January 27, 2010, is made by and among IRVING H. PICARD, in his capacity as Trustee for the liquidation under the Securities Investor Protection Act of 1970, as amended ("SIPA") of Bernard L. Madoff Investment Securities LLC (the "Trustee"), on the one hand, and JEANNE LEVY-CHURCH and FRANCIS N. LEVY (collectively, the "Levys"), on the other hand (each of the Trustee and the Levys, a "Party").

BACKGROUND

- A. Bernard L. Madoff Investment Securities LLC ("BLMIS") was a registered broker-dealer and a member of the Securities Investor Protection Corporation ("SIPC").
- B. On December 11, 2008 (the "Filing Date"), the Securities and Exchange Commission (the "Commission") filed a complaint in the United States District Court for the Southern District of New York (the "District Court") against BLMIS and Bernard L. Madoff ("Madoff"). On December 12, 2008, the District Court entered an order which among other things appointed a receiver (the "Receiver") for the assets of BLMIS (No. 08-CV-10791(LSS)).
- C. On December 15, 2008, pursuant to section 5(a)(4)(A) of SIPA, the Commission consented to a combination of its own action with the application of SIPC. Thereafter, SIPC filed an application in the District Court under section 5(a)(3) of SIPA alleging, *inter alia*, that BLMIS was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protections afforded by SIPA. On December 15, 2008, the District Court granted the SIPC application and entered an order under SIPA, which, in pertinent part, appointed the Trustee for the liquidation of the business of BLMIS under section 5(b)(3) of SIPA and removed the case to the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") under section 5(b)(4) of SIPA, where it is currently pending as Case No. 08-01789 (BRL) (the "SIPA Proceeding"). The Trustee is duly qualified to serve and act on behalf of the estate of BLMIS.
- D. On December 11, 2008, Madoff was arrested by federal agents for criminal securities laws violations including securities fraud, investment adviser fraud, and mail and wire fraud. At a plea hearing on March 12, 2009, in the case captioned United States v. Madoff, Case No. 09-CR-213(DC), Madoff pled guilty to an 11-count criminal information filed against him by the United States Attorneys' Office for the Southern District of New York and admitted that he "operated a Ponzi scheme through the investment advisory side of [BLMIS]" and engaged in fraud in the operation of BLMIS.
- E. Norman F. Levy ("Mr. Levy"), a New York City commercial real estate broker, began investing with BLMIS in the mid-1970's. Over the years, Mr. Levy invested a significant portion of his assets with BLMIS.
- F. Prior to his death in September of 2005, Mr. Levy designated Madoff as an executor of his estate. As executor, Madoff was vested with power to make unilateral investment decisions regarding the estate's non-real estate assets.

G. After Mr. Levy's death, acting as the executor, Madoff transferred to BLMIS from the estate more than \$250,000,000.

H. A number of Mr. Levy's family members, family trusts, and charitable trusts established by the family were also BLMIS customers. Their BLMIS client numbers and account names are listed in Attachment A ("Levy BLMIS Accounts"), which is intended to be part of this Agreement. If any accounts were inadvertently omitted from Attachment A, the Levys and the Trustee agree to act in good faith to revise Attachment A to include such accounts. For the avoidance of doubt, the term Levy BLMIS Accounts does not include any accounts held by Jeff Hinte ("Mr. Hinte").

I. During the six years prior to the Filing Date, approximately \$305,000,000 was withdrawn from the Levy BLMIS Accounts in excess of the amounts that were deposited into them. Of this amount, the Betty & Norman F. Levy Foundation, a charitable organization, withdrew approximately \$84,000,000 in excess of the amount that it had deposited into its account, and all of those funds were donated to charitable causes.

J. Jeanne Levy-Church and Francis N. Levy (together, the "Levys") are Mr. Levy's children. The Levys were customers of BLMIS, and they maintained the customer accounts listed in their names on Attachment A. Before the Madoff fraud was discovered, both were heavily involved in philanthropic work.

K. Zeno F. Levy ("Zeno") and Titus R. Levy ("Titus") are the children of Francis N. Levy and his wife, Hallie D. Cohen. BLMIS accounts were established for Titus and Zeno under the New York Uniform Gifts to Minors Act ("UGMA Accounts"). Zeno is now 25 years old, and Titus is 21 years old.

L. In the spring of 2009, the Levys initiated discussions with the Trustee. The Levys were among the first group of former BLMIS customers to approach and seek resolution with the Trustee. After their initial meeting, the Parties entered into good faith discussions. At all times, the Levys shared information and documents about themselves and about the Levy BLMIS Accounts with the Trustee and his counsel. The Levys have been cooperative and, from an early point in the discussions, indicated a desire to resolve their situation fairly. Their cooperation has sped resolution and minimized Trustee expenses.

M. The Trustee has asserted that the Levys are liable to the BLMIS estate under 11 U.S.C. §§ 544(b), 547, 548 and 550 (collectively, the "Avoiding Powers Claims"), and may also be liable under the New York Uniform Fraudulent Conveyance Act (New York Debtor and Creditor Law §§ 270-281), for the Levys' net withdrawals of fictitious profits within the statutory period.

N. The Levys dispute the legal and factual bases of liability for some of the withdrawals. In particular, the Levys contend: that they do not bear any liability for their good-faith withdrawals made prior to two years before the effective date of this Agreement; that withdrawals from their Levy BLMIS Accounts were comprised of invested principal and investment earnings to which they are legally entitled as opposed to fictitious profits; and that the account balances for the Levy BLMIS Accounts were real as of December 31, 1991.

Nevertheless, the Levys wish to settle all disputes with the Trustee, and they do so without admitting any liability.

O. Zeno and Titus have asserted that they are both entitled to allowance of a customer claim in the BLMIS liquidation proceeding in an amount equal to the capital invested in their UGMA Accounts under the provisions of SIPA or to the benefit of SIPC advances under section 9 of SIPA in the SIPA Proceeding upon compliance with the applicable provisions of SIPA and the Bankruptcy Code. Both Zeno and Titus filed customer claims under SIPA prior to the July 2, 2009 bar date (the "Zeno and Titus Claims").

P. The Trustee, on the one hand, and the Levys, on the other hand, wish to settle their disputes about the matters described above without the expense, delay and uncertainty of litigation.

NOW, THEREFORE, in consideration of the foregoing, of the mutual covenants, promises and undertakings set forth herein, and for good and valuable consideration, the mutual receipt and sufficiency of which are hereby acknowledged, the Trustee and the Levys agree:

AGREEMENT

1. The Levys' Agreement to Bankruptcy Court Jurisdiction. The Levys agree that the agreements with BLMIS that they each had in connection with the Levy BLMIS Accounts and their respective communications and trading activities with respect to the Levy BLMIS Accounts, submit them to the jurisdiction of the Bankruptcy Court for the purpose of the SIPA Proceeding and any Avoiding Power Claims that the Trustee may bring against them under section 544, 547, 548 and/or 550 of the Bankruptcy Code; provided, however, that prior to Bankruptcy Court approval of this Agreement, the Levys shall not be deemed, by their having executed this Agreement, to have (a) consented to the jurisdiction of the Bankruptcy Court or any other court with respect to proceedings, if any, commenced in any case against or otherwise involving the Levys, or (b) waived or released their right to trial by jury.

2. Payment to Trustee. The Levys shall pay, by wire transfer by the Closing (as defined in paragraph 7), to the Trustee the sum of \$220,000,000 in full and final settlement of all Avoiding Power Claims and other claims of the Trustee or the BLMIS estate against the Levys.

3. Withdrawal of Zeno and Titus Claims. As part of the consideration to the Trustee hereunder, the Zeno and Titus Claims shall be deemed withdrawn with prejudice upon the occurrence of the Closing.

4. Release by Trustee; Covenant Not to Sue. In consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, except with respect to any rights arising under this Agreement, upon the payment of all amounts set forth in paragraph 2 hereof and his receipt of a Release Subscription (in the form annexed hereto) for each of the Levy Releasees (as defined below), the Trustee will be deemed to have (a) released, remised and forever discharged each of the people and entities listed on Attachment B (collectively, "Levy Releasees") from any and all past, present or future claims or causes of action (including any suit, petition, demand, or other claim in law, equity or arbitration) and from any and all allegations of liability or damages

(including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts), of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorneys' fees, costs or disbursements), known or unknown, that are, have been, could have been or might in the future be asserted by the Trustee against any of the Levy Releasees and that are based on, arise out of or relate in any way to the affairs of BLMIS or the Levy BLMIS Accounts and not in any other context or capacity and (b) granted a covenant not to sue to (i) any person related by blood or marriage as of the Closing to any of the Levy Releasees (other than Mr. Hinte) and (ii) any entity in which any of the Levy Releasees held or hold, as of or prior to the Closing, a financial interest, in the case of (i) and (ii) for Avoiding Powers Claims but only to the extent that such person or entity is an immediate or mediate transferee of any of the Levy Releasees under section 550(b) of the Bankruptcy Code; provided, however, that the foregoing covenant not to sue shall not apply to any Avoiding Powers Claims based on a transfer of funds that does not constitute an immediate or mediate transfer of funds from a Levy Releasee to the entity. For the avoidance of doubt, the term Levy Releasees does not include Mr. Hinte and nothing herein shall release or be deemed to be a release by the Trustee of Mr. Hinte and, further, nothing herein shall be or be deemed to be a covenant not to sue by the Trustee of Mr. Hinte for any liability he may have to the Trustee.

5. Release by Levys. In consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the Levy Releasees, by having an authorized representative sign a Release Subscription for each Levy Releasee, hereby releases, acquits and absolutely discharges the Trustee and all his agents, BLMIS and its estate, from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, damages, judgments, and claims whatsoever, asserted or unasserted, known or unknown, now existing or arising in the future, arising out of or in any way related to BLMIS.

6. Cooperation. Upon reasonable request of the Trustee, the Levys agree, on behalf of themselves and to the extent they may bind each of the other holders of the Levy BLMIS Accounts, to reasonably cooperate with the Trustee, in connection with any efforts to recover funds invested in BLMIS.

7. Closing. There shall be a closing ("Closing") within 30 days after the date on which this Agreement becomes effective and binding on the Parties under paragraph 8, on a date agreed by the Parties, at the offices of Trustee's counsel in New York, N.Y. At the Closing, (a) the Levys shall make, or shall have made, the payment required under paragraph 2 above; (b) the releases contained in paragraphs 4 and 5 shall become effective without any further action by any of the Parties; and (c) the Zeno and Titus Claims shall be deemed withdrawn as provided in paragraph 3.

8. Bankruptcy Court Approval; Effective Date; Termination. This Agreement is subject to, and shall become effective and binding on the Parties upon and only upon, the Bankruptcy Court's approval of this Agreement in the SIPA Proceeding by an order that is no longer subject to appeal, review or rehearing. The form of the approval order shall be subject to

the Levys' reasonable approval. The Trustee shall use his best efforts to obtain such approval as promptly as practicable after the date of this Agreement. The Trustee shall provide the Levys with a draft of any motion to the Bankruptcy Court for approval of this Agreement, which shall be subject to the Levys' reasonable approval. If this Agreement does not become effective, (a) this Agreement (other than this paragraph and paragraphs 18 and 19) shall terminate and be null and void for all purposes, (b) all of the statements, admissions, consents and agreements contained in the Agreement (other than this paragraph and paragraphs 18 and 19) shall be null and void, and (c) neither the Trustee nor the Levys may use or rely on any such statement, admission, consent or agreement in any public statement or litigation involving the SIPA Proceedings, any case or proceeding relating to the SIPA Proceeding or any case or proceeding relating to BLMIS or Madoff and (d) the Levys shall not be deemed, on account of their having executed this Agreement, to have consented to the jurisdiction of the Bankruptcy Court or released their right to trial by jury.

9. Authority. The Levys, as well as the authorized representatives of each Levy Releasee, represent and warrant to the Trustee as of the date hereof that each of them has the full power, authority and legal right to execute and deliver, and to perform its respective obligations under, this Agreement and has taken all necessary action to authorize the execution and delivery of, and the performance of its respective obligations under, this Agreement.

10. Further Assurances. The Trustee and the Levys shall execute and deliver any document or instrument reasonably requested by any of them after the date of this Agreement to effectuate the intent of this Agreement.

11. Entire Agreement. This Agreement and any confidentiality agreement between the Trustee and the Levys constitute the entire agreement and understanding between and among the Parties and supersede all prior agreements, representations and understandings concerning the subject matter hereof.

12. Amendments, Waiver. This Agreement may not be terminated, amended or modified in any way except in a writing signed by all the Parties. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

13. Assignability. No Party hereto may assign its rights under this Agreement without the prior written consent of each of the other Parties hereto.

14. Successors Bound. This Agreement shall be binding upon and inure to the benefit of each of the Parties and their successors and permitted assigns.

15. No Third Party Beneficiary. Except as expressly provided in paragraphs 6 and 7, the Parties do not intend to confer any benefit by or under this Agreement upon any person or entity other than the Parties hereto and their respective successors and permitted assigns.

16. No Admission of Liability or Wrongdoing. By entering into this Agreement, the Levys do not admit and they expressly deny that they owe any liability to the Trustee other than provided for herein, or to any other person or that they engaged in any wrongdoing.

17. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

18. Exclusive Jurisdiction. The Parties agree that any action for breach or enforcement of this Agreement may be brought only in the Bankruptcy Court. No Party shall bring, institute, prosecute or maintain any action pertaining to the enforcement of any provision of this Agreement in any court other than the Bankruptcy Court.

19. Captions and Rules of Construction. The captions in this Agreement are inserted only as a matter of convenience and for reference and do not define, limit or describe the scope of this Agreement or the scope or content of any of its provisions. Any reference in this Agreement to a paragraph is to a paragraph of this Agreement. "Includes" and "including" are not limiting.

20. Counterparts; Electronic Copy of Signatures. This Agreement and attachments may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same document. The Parties may evidence their execution of this Agreement by delivery to the other Parties of scanned or faxed copies of their signatures, with the same effect as the delivery of an original signature. The Levy Releasees may evidence their execution of the Release Subscription by delivery to the Parties of scanned or faxed copies of their signatures, with the same effect as the delivery of an original signature.

21. Termination of BLMIS Account Agreements with BLMIS. All agreements between holders of the Levy BLMIS Accounts and BLMIS are terminated as of the Closing.

22. Notices. Any notices under this Agreement shall be in writing, shall be effective when received and may be delivered only by hand, by overnight delivery service, by fax or by electronic transmission to:

If to the Trustee, c/o:

Marc Hirschfield
Baker & Hostetler LLP
45 Rockefeller Center, Suite 1100
New York, NY 10111
F: (212) 589-4201
E: mhirschfield@bakerlaw.com

If to the Levys, c/o:

Ronald L. Olson and Cary B. Lerman
Munger, Tolles & Olson LLP
355 S. Grand Ave., 35th Floor
Los Angeles, CA 90071
F: (213) 683-9100
E: ron.olson@mtto.com, cary.lerman@mtto.com

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

IRVING H. PICARD, Trustee

FRANCIS N. LEVY

JEANNE LEVY-CHURCH

RELEASE SUBSCRIPTION

The undersigned is a "Levy Releasee" as defined in the Agreement dated as of January 27, 2010, by and among Irving H. Picard, in his capacity as Trustee for the liquidation under the Securities Investor Protection Act of 1970, as amended, of Bernard L. Madoff Investment Securities LLC (the "Trustee"), on the one hand, and Jeanne Levy-Church and Francis N. Levy (the "Levys"), on the other hand. For and in consideration of the Trustee's release of the undersigned under paragraph 4 of the Agreement, the undersigned subscribes to the release set forth in paragraph 5 of the Agreement (and only to such release) with the same force and effect as if the undersigned were a party to the Agreement. By signing this Subscription, the undersigned does not become a Party to the Agreement and is not undertaking any rights or obligations under any other provisions of the Agreement, except that paragraphs 18, 19, 20, 21, and 22 of the Agreement apply to this Subscription as though such paragraphs were a part of this Subscription.

Dated _____, 201__.

By: _____
Name:
Title:

ATTACHMENT A: LEVY BLMIS ACCOUNTS

Account Number	Account Name
1L0027	NORMAN F LEVY C/O KONIGSBERG WOLF & CO ATTN: PAUL KONIGSBERG
1L0028	NORMAN F LEVY SPECIAL KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0086	NORMAN F LEVY C/O KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0088	NORMAN F LEVY C/O KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0099	NORMAN F LEVY C/O KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0101	NORMAN LEVY C/O KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0171	NORMAN F LEVY C/O KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0175	NORMAN F LEVY C/O KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0236	ESTATE OF NORMAN F LEVY C/O KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0300	ESTATE OF NORMAN F LEVY C/O KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0308	ESTATE OF NORMAN LEVY-RE C/O KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0024	FRANCIS N LEVY C/O KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0078	FRANCIS N LEVY C/O KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0084	FRANCIS N LEVY C/O KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0090	FRANCIS N LEVY C/O KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0102	FRANCIS N LEVY C/O KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0169	FRANCIS N LEVY C/O KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0179	FRANCIS N LEVY C/O KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0026	JEANNE LEVY-CHURCH C/O PAUL KONIGSBERG
1L0075	JEANNE LEVY-CHURCH C/O PAUL KONIGSBERG
1L0085	JEANNE LEVY-HINTE C/O KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0089	JEANNE LEVY-HINTE C/O KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0103	JEANNE LEVY CHURCH C/O PAUL KONIGSBERG

1L0170	JEANNE LEVY HINTE C/O KONIGSBERG WOLF & CO PC ATTN: PAUL KONIGSBERG
1L0178	JEANNE LEVY-CHURCH C/O PAUL KONIGSBERG
1C1061	HALLIE D COHEN
1F0074	FRANJEAN 39TH STREET REALTY CO C/O KONIGSBERG WOLF & CO ATTN: PAUL KONIGSBERG
1L0025	TRUST M-B FRANCIS N LEVY U/I/D 07/24/91 JEFFREY LEVY-HINTE TRUSTEE
1L0029	TITUS RAY LEVY UGMA FRANCIS LEVY CUSTODIAN C/O PAUL KONIGSBERG
1L0030	ZENO FRANCIS LEVY UGMA FRANCIS LEVY CUSTODIAN C/O PAUL KONIGSBERG
1L0302	GST EXEMPT TRUST U/W/O NORMAN F LEVY, FRANCIS N LEVY, JEANNE LEVY-CHURCH, BERNARD L MADOFF TRUSTEES
1L0305	CHARITABLE LEAD ANNUITY TRUST U/W/O NORMAN F LEVY FRANCES N LEVY, JEANNE LEVY- CHURCH, BERNARD L MADOFF TRUSTEES
1L0313	THE ZENO F LEVY TRUST JEFFREY LEVY-HINTE TRUSTEE
1L0314	THE TITUS R LEVY TRUST JEFFREY LEVY-HINTE TRUSTEE
1P0131	THE PHILOCTETES CENTER INC
1L0023	THE BETTY AND NORMAN F LEVY FOUNDATION INC C/O PAUL KONIGSBERG
1L0073	NORMAN F LEVY REVOCABLE TRUST U/I/D 4/1/93 C/O ALBERT MALTZ, TRUSTEE
1L0083	LEVY FASHION CENTER ASSOCIATES LLC C/O PAUL KONIGSBERG
1L0168	TRUST M-B FRANCIS N LEVY U/I/D 7/24/91 C/O PAUL KONIGSBERG

ATTACHMENT B: LEVY RELEASEES

1. The Estate of Norman F. Levy
2. Francis N. Levy
3. Jeanne Levy-Church
4. Ken Levy-Church
5. Hallie D. Cohen
6. Zeno F. Levy
7. Titus R. Levy
8. The Zeno F. Levy Trust
9. The Titus R. Levy Trust
10. Zeno Francis Levy UGMA
11. Titus Ray Levy UGMA
12. The Betty & Norman F. Levy Foundation Inc.
13. The Philoctetes Center, Inc.
14. The Charitable Lead Annuity Trust u/w/o Norman F. Levy, et al.
15. GST Exempt Trust u/w/o Norman F. Levy, et al.
16. The Francis N. Levy Mutual Benefit Trust
17. FranJean 39th Street Realty Co.
18. Francis N. Levy & Jean D. Levy, JV
19. Levy Fashion Center Associates LLC

EXHIBIT B
PROPOSED ORDER

Hearing Date: February 18, 2010 at 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-1789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

**ORDER PURSUANT TO SECTION 105(a) OF THE
BANKRUPTCY CODE AND RULES 2002 AND 9019 OF THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE APPROVING AN AGREEMENT BY
AND AMONG THE TRUSTEE AND JEANNE LEVY-CHURCH
AND FRANCIS N. LEVY**

Upon the motion (the "Motion")¹ of Irving H. Picard, Esq. (the "Trustee") as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC and Bernard L. Madoff, seeking entry of an order, pursuant to sections 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, approving the agreement, by and among the Trustee, on the one hand, and Jeanne Levy-Church and Francis N. Levy, on the

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

other hand, in substantially the form annexed to the Motion (the "Agreement"); and it appearing that due and sufficient notice has been given to all parties in interest as required by Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure; and the Court having considered the Affidavit of Irving Picard in support of the Motion; and it further appearing the relief sought in the Motion is appropriate based upon the record of the hearing held before this Court to consider the Motion; and it further appearing that this Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and after due deliberation; and sufficient cause appearing therefor; it is

ORDERED, that the Motion is granted in its entirety; and it is further

ORDERED, that the Agreement between the Trustee on the one hand and Jeanne Levy-Church and Francis N. Levy on the other hand is hereby approved and authorized; and it is further

ORDERED, that the Trustee, Jeanne Levy-Church and Francis N. Levy shall each comply with and carry out the terms of the Agreement.

Dated: New York, New York
February __, 2010

HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C
AFFIDAVIT OF IRVING PICARD

Baker & Hostetler LLP

45 Rockefeller Plaza

New York, New York 10111

Telephone: (212) 589-4200

Facsimile: (212) 589-4201

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*Attorneys for Irving H. Picard, Esq., Trustee
for the Substantively Consolidated SIPA
Liquidation of Bernard L. Madoff
Investment Securities LLC and Bernard L.
Madoff*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-1789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

**AFFIDAVIT OF IRVING H. PICARD, TRUSTEE, IN SUPPORT OF MOTION FOR
ENTRY OF ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE
AND RULES 2002 AND 9019 OF THE FEDERAL RULES OF BANKRUPTCY**

**PROCEDURE APPROVING AN AGREEMENT BY AND AMONG THE TRUSTEE
AND JEANNE LEVY-CHURCH AND FRANCIS N. LEVY**

Irving H. Picard, Esq., being duly sworn, hereby attests as follows:

1. I am Trustee ("Trustee") for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") and Bernard L. Madoff. I submit this Affidavit in support of the Motion for Entry of Order Pursuant to Section 105(a) of the Bankruptcy Code and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, dated January 27, 2010 (the "Motion"), seeking approval of an Agreement by and among the Trustee and Jeanne Levy-Church and Francis N. Levy (the "Agreement"). I make this Affidavit based upon my own personal knowledge or upon information that I believe to be true. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

2. I believe that the terms of the Agreement fall well above the lowest point in the range of reasonableness and, accordingly, the Agreement should be approved by this Court. The Agreement resolves all issues regarding my claims against the Levys (the "Claims") without the need for protracted, costly, and uncertain litigation. Litigating the Claims would undoubtedly be expensive and would require a significant commitment of time by the various professionals involved in the matter.

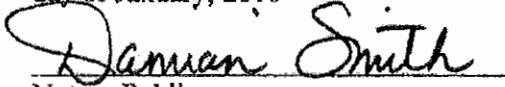
3. Given the cost and complexities involved in proceeding with litigation, I have determined that the proposed settlement with the Levys represents a fair compromise of the Claims. I have also determined that proceeding against the Betty & Norman F. Levy Foundation is fruitless because of its lack of significant assets and inability to pay any judgment against it. Moreover, under the settlement, the Levys will return the amount that I demanded from them, \$220,000,000. I believe that such amount represents nearly one-hundred percent of the amount

that the Levy BLMIS Account Holders withdrew from BLMIS during the six-year period before the filing (using the data available to the me at the time I made the demand). The Agreement also furthers the interests of the customers of BLMIS by adding a substantial amount of money to the fund of customer property now.



IRVING H. RICARD

Sworn to before me this 27th
day of January, 2010



Notary Public

DAMIAN SMITH
Notary Public, State of New York
No. 01SM6169097
Qualified in New York County
Commission Expires June 18, 2011

BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
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*Attorneys for Irving H. Picard, Esq., Trustee
for the Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities LLC
and Bernard L. Madoff*

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)

CERTIFICATE OF SERVICE

I, NIKKI M. LANDRIO, hereby certify that on January 27, 2010, I served true copies of

the

- **Notice of Motion For Entry Of Order Pursuant To Section 105(a) Of The Bankruptcy Code And Rules 2002 And 9019 Of The Federal Rules Of Bankruptcy Procedure Approving An Agreement By And Among The Trustee And Jeanne Levy-Church And Francis N. Levy; and**
- **Motion For Entry Of Order Pursuant To Section 105(a) Of The Bankruptcy Code And Rules 2002 And 9019 Of The Federal Rules Of Bankruptcy**

Procedure Approving An Agreement By And Among The Trustee And Jeanne Levy-Church And Francis N. Levy (with Exhibits attached)

upon the interested parties who receive electronic service through ECF, by emailing the interested parties true and correct copies via electronic transmission to the email addresses designated for delivery and/or by placing true and correct copies thereof in sealed packages designated for regular U.S. Mail to those parties as set forth on the attached Schedule A.

Dated: New York, New York
January 27, 2010

s/Nikki M. Landrio
NIKKI M. LANDRIO

SCHEDULE A

Internal Revenue Service
District Director
290 Broadway
New York, New York 10008

Internal Revenue Service
Centralized Insolvency Operation
Post Office Box 21126
Philadelphia, PA 19114

U.S. Department of Justice, Tax Division
Box 55
Ben Franklin Station
Washington, DC 20044

Chapter 7 Trustee

Alan Nisselson, Esq.
Windels Marx Lane & Mittendorf, LLP
156 West 56th Street
New York, NY 10019

Securities Investor Protection Corporation

Kevin Bell – kbell@sipc.org
Josephine Wang – jwang@sipc.org

Securities and Exchange Commission

Alistaire Bambach – bambacha@sec.gov
Alexander Mircea Vasilescu – vasilescua@sec.gov
Terri Swanson – swansont@sec.gov
Preethi Krishnamurthy – krishnamurthyp@sec.gov

United States Attorney for SDNY

Marc Litt – marc.litt@usdoj.gov
Lisa Baroni – lisa.baroni@usdoj.gov
Natalie Kuehler - natalie.kuehler@usdoj.gov

Counsel to the JPL

Eric L. Lewis – Eric.Lewis@baachrobinson.com

Notices of Appearance

Service via Electronic Notification through ECF Filing

Counsel to Jeanne Levy-Church and Francis N. Levy

Ronald L. Olson, Esq. – ron.olson@mto.com
Cary B. Lerman, Esq. – cary.lerman@mto.com

EXHIBIT F

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In the Matter

of

Case No.

1-08-01789

SECURITIES INVESTOR PROTECTION CORPORATION

V.

BERNARD L. MADOFF INVESTMENT SECURITIES, et al.,

Debtors.

-----x

February 18, 2010

United States Custom House

One Bowling Green

New York, New York 10004

Motion for an Entry of Order Pursuant to Section
105(a) of the Bankruptcy Code and Rules 2002 and 9019 of
the Federal Rules of Bankruptcy Procedure Approving an
Agreement by and Among the Trustee and Jeanne Levy-Church
and Francis N. Levy, et al.

B E F O R E:

HON. BURTON R. LIFLAND,

U.S. Bankruptcy Judge

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A P P E A R A N C E S :

BAKER HOSTETLER, LLP
Attorneys for Irving H. Picard, Trustee
45 Rockefeller Plaza
New York, New York 10017

BY: MARC E. HIRSCHFIELD, ESQ.

-and-

PAUL EYRE, ESQ.

1 Proceedings

2 THE COURT: Securities Investor Protection
3 vs. Bernard L. Madoff Investment Securities.

4 Is that based on the calendar or caption,
5 The Bankruptcy Link?

6 MR. HIRSCHFIELD: Calendar.

7 THE COURT: So we ought to recaption it
8 then.

9 MR. HIRSCHFIELD: Good morning, Your
10 Honor.

11 THE COURT: Good morning.

12 MR. HIRSCHFIELD: I am Marc Hirschfield,
13 from the law firm of Baker Hostetler, on behalf of the
14 Trustee. With me today is my colleague, Paul Eyre, who
15 helped work on the settlement.

16 Before the Court today is the motion under
17 Bankruptcy Rule 9019 seeking the Court's approval an
18 agreement with Jeanne Levy-Church and Francis Levy, adult
19 children of Betty and Norman Levy drew up an agreement the
20 Levys will return to the Trustee 220 million dollars.

21 By way of background, Your Honor, Norman
22 Levy was a real estate executive here in New York. He
23 began investing with Madoff in the mid-1970s.

24 Over the years, Mr. Levy opened up a number
25 of accounts with BLMIS for himself, for his wife, and for

1 various members of his family including his children and
2 the family and other charitable trusts. Mr. Levy passed
3 away in 2005, and throughout his life he placed great trust
4 in Mr. Madoff.

5 In his will, he appointed Madoff as one of
6 his executors and that granted Madoff the authority to make
7 unilateral decisions with regard to nonreal estate assets
8 of his estate.

9 Mr. Madoff unfortunately took advantage of
10 that trust and breached it, and after Mr. Levy's death
11 transferred 220 million dollars of non-Madoff assets.

12 THE COURT: As an executor --

13 MR. HIRSCHFIELD: Yes.

14 THE COURT: -- of the Levy estate?

15 MR. HIRSCHFIELD: Yes. He transferred it to
16 BLMIS and, of course, that money was lost along with all
17 the other money.

18 THE COURT: This is a bit of lack of
19 integrity we have not seen before.

20 MR. HIRSCHFIELD: I think there is no
21 floor to Mr. Madoff's integrity.

22 So, essentially, Your Honor, Madoff stole
23 the 220 million dollars from Mr. Levy's heirs. Even with
24 this 220 million dollars over the years the Levy account
25 holders took out more money from Madoff than they put in.

1 Therefore, Your Honor, under our parlance
2 they are not winners. Last spring Jeanne and Francis
3 Levy, the two heirs of Mr. Norman Levy approached us
4 through their counsel to begin to discuss their potential
5 liability. We did not contact them. They contacted us.

6 From the very beginning, Your Honor, they
7 made it very clear to us they want to do the right thing.
8 They felt badly about having other people's money and they
9 wanted to return to the Trustee the profits they received,
10 which was really other people's money.

11 After discussing with them various things
12 and learning about them and their finances and their assets
13 and their liabilities, the Trustee made a demand of them of
14 220 million dollars, which at that time was the six-year
15 number of the money that they took out.

16 In addition to that, Your Honor, the 220
17 million dollars another 84 million of false profits was
18 withdrawn by the Betty and Norman Levy Foundation, which
19 was a charitable trust which Mr. Levy and his wife had set
20 up. They told us, the Levis, and they gave us evidence to
21 corroborate all of this 84 million dollars which was
22 donated to charitable causes and the foundation has
23 virtually nothing left to which to return anything to the
24 Trustee.

25 Based upon this, the trustee in his

1 business judgment made the decision not to seek any
2 recovery from the trust. Again, to do so, from the
3 foundation rather, to do so would have been futile because
4 as I said they had nothing to give us. So, therefore,
5 trying to commence a lawsuit against the foundation would
6 have made no sense.

7 The Trustee does believe that the other
8 money withdrawn by the Levys is recoverable under Section
9 544, 548 and 550 of the Bankruptcy Code.

10 When the Levy executed liability to the
11 trust they agreed to pay us the amount we requested, 220
12 million dollars. That agreement is set forth in a
13 settlement agreement attached to the motion.

14 I will just highlight a few of the terms of
15 the agreement for the Court's reference.

16 Under the agreement, as mentioned the Levys
17 will pay us at closing which will happen very shortly after
18 an order approving the settlement has become final some 220
19 million dollars in one payment.

20 The Trustee and the Levis will exchange a
21 release and the Trustee will agree not to sue certain
22 entities that are related to the Levis.

23 The Levis have agreed, respectively, they
24 will assist us when asked in our effort to recover other
25 money from other people and, finally, there are two

1 children of Francis Levy, who unlike the other Levy
2 members, those accounts that they had with Madoff were not
3 losers.

4 They submitted claims before the bar date
5 and those two proofs of claim will be redeemed withdrawn as
6 part of the settlement. So there will be no recovery at
7 all on those two claims.

8 We believe the settlement is a very good
9 one and we ask for the Court's approval. In connection
10 with our motion, the Trustee submitted an affidavit to the
11 Court in which he stated that he believes the settlement is
12 appropriate in his business judgment and that the business
13 agreement falls well above the lowest point of
14 reasonableness.

15 While we believe we would have prevailed if
16 we had to sue the Levis, we don't believe we have collected
17 anything more than just getting this settlement. So,
18 therefore, we think it makes sense to have the settlement
19 agreement.

20 Your Honor, I just have one additional
21 thing to add, as we set forth in our motion and the public
22 statements, the Trustee very much appreciates the manner in
23 which the Levys conducted themselves throughout these
24 discussions.

25 As I said earlier, the discussions were, in

1 fact, initiated by the Levis. There were a lot of people
2 in this case who withdrew false profits and there are some
3 who are fighting us virtually tooth and nail not to return
4 the money, and others like the Levys and Optimal which we
5 previously settled came forward to voluntarily return the
6 money.

7 The Trustee, the Levis should serve as an
8 example to others in this case in a situation similar to
9 the Levys, and should come forward and like the Levys
10 return to us the amounts they've withdrawn.

11 In conclusion, Your Honor, we very much
12 think the settlement is a satisfactory one and we ask for
13 Your Honor's approval.

14 THE COURT: Does anyone else want to be
15 heard?

16 Well, I am going to approve the settlement,
17 based upon the papers before me and representations here.

18 It is clear that the Trustee has done an
19 appropriate level of due diligence in recommending the
20 settlement. Especially with respect to the concept of
21 abandoning certain actions based upon the difficulties
22 associated with the collection, that is with respect to the
23 foundation.

24 The settlement does resolve the spectre of
25 an expensive and protracted litigation, and it allows the

1 parties to go forward with a degree of comfort that there
2 are lawyers who are now out of the horizon to a certain
3 extent and certainly, the way the settlement has come about
4 and the amount, although interests could have demanded or
5 based upon information received, subsequent to the first
6 offer, it is clear that this settlement is well above the
7 lowest rung in a range of reasonableness and is right on
8 target in that regard and I will entertain an order
9 approving it.

10 MR. HIRSCHFIELD: Thank you, Your Honor.

11 THE COURT: I have approved the order.

12 MR. HIRSCHFIELD: Yes. Thank you, again,
13 Your Honor.

14 That would be all we have on the calendar
15 for today.

16 THE COURT: Thank you.

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EXHIBIT G



SECURITIES INVESTOR PROTECTION CORPORATION
805 FIFTEENTH STREET, N.W., SUITE 800
WASHINGTON, D.C. 20005-2215
(202) 371-8300 FAX (202) 371-6728
WWW.SIPC.ORG

January 24, 2011

BY MESSENGER

The Honorable Scott Garrett
Chairman
Subcommittee on Capital Markets and
Government-Sponsored Enterprises
House Financial Services Committee
United States House of Representatives
2244 Rayburn House Office Building
Washington, D. C. 20515

RE: Request for Additional Information on Madoff Matter

Dear Chairman Garrett:

This is in response to your letter of December 9, 2010, requesting additional information in connection with the failure of the Bernard L. Madoff Investment Securities LLC ("BLMIS") brokerage firm. Members of the SIPC staff and the Trustee's staff have assembled data in response. Before answering your specific inquiries, I believe it makes sense to bring you up to date on a number of recent events, all of which are very positive for the customers of BLMIS firm. Also provided is some background information on the use of avoiding powers.

Settlements Which Will Increase The Distribution To Customers

The Securities Investor Protection Act, 15 U.S.C. §78aaa et seq. ("SIPA"), provides that cases under SIPA are to be conducted in accordance with specified provisions of the Bankruptcy Code, to the extent the two statutes are consistent. This allows Irving Picard, the trustee in the BLMIS case, to use the tools that are available to a bankruptcy trustee to recover assets, in order to make the equitable distribution called for under SIPA. Among those tools is the ability to reverse, or, in the statutory parlance, "avoid" transfers of assets made prior to the initiation of the liquidation.

Mr. Picard's use of the avoidance powers has been very successful. But Mr. Picard and his attorneys are mindful of the human toll of such lawsuits, and have used discretion and compassion in dealing with the unprecedented realities presented by the largest Ponzi scheme in history.

Successful Negotiations

- Mr. Picard negotiated a settlement with Swiss bank Union Bancaire Privée, which was approved by the Bankruptcy Court. The settlement will result in the addition of approximately \$500 million to "customer property" for distribution to customers of BLMIS.
- Mr. Picard negotiated a \$550 million settlement with Carl Shapiro, Robert Jaffe, and related entities, which was approved by the Bankruptcy Court. In conjunction with the United States Attorney for the Southern District of New York, the \$550 million and an additional \$75 million will be distributed by Mr. Picard as Special Master, to Madoff victims as part of a civil forfeiture.
- Mr. Picard negotiated settlements with a number of charitable and nonprofit institutions that received avoidable transfers, in the sum of \$80 million. These settlements are practical and equitable solutions to the terrible problems caused by Bernard Madoff. These settlements balance the concerns of both the charities that innocently received stolen funds, and the people whose money was stolen and who will receive distributions as a result of these agreements.
- Teaming with the United States Attorney for the Southern District of New York, Mr. Picard negotiated a settlement with the Estate of Jeffrey Picower in the total amount of \$7.2 billion. Under the agreement with the Trustee, which was approved by the Bankruptcy Court, \$5 billion will come to the Trustee for distribution to customers in the SIPA proceeding. The \$2.2 billion received by the United States Attorney also will benefit the victims. This will be distributed by Mr. Picard in the separate capacity of Special Master.

The Trustee will need Bankruptcy Court approval to distribute the funds to customers. The preparation of an application for such relief is underway.

The benefits of these settlements, in both dollars to the victims, and as a template for other future settlements in the BLMIS case, cannot be overstated. It must be emphasized that persons whom the Trustee is suing in avoidance are persons who received other investors' money. In a Ponzi scheme, a dollar more for one victim means a dollar less for another victim. Thus, in the BLMIS case, every dollar received by an investor above the amount that the investor deposited with BLMIS is one dollar less for the investor to whom the money actually belonged. Unless the Trustee is allowed to pursue the avoidance suits, some investors will continue to benefit at the expense of others, even if all are equally innocent.

It also must be emphasized that the customer's "net equity" under SIPA will not necessarily govern a trustee's ability to bring avoidance actions. What a customer is owed in a

SIPA case, that is, the customer's "net equity," is as defined in SIPA. Conversely, a trustee's power to avoid transfers is pursuant to provisions of the Bankruptcy Code made applicable under SIPA to a SIPA proceeding.

The Practical Aspects of Using the Avoiding Powers

The Trustee is using the avoidance powers rationally, with discretion and compassion, and with tangible results. As is evidenced by the settlements with the various charities, there is a balance to be struck here, and I believe the Trustee has done an excellent job of finding the correct solutions on a case by case basis.

The Trustee's balanced approach is evidenced by the Hardship Program implemented before the "avoidance action" complaints were filed. At the start of the liquidation proceeding, in December, 2008, the Trustee instituted a Hardship Program to identify the BLMIS claimants suffering hardship and to accelerate the processing and payment of their claims in the proceeding. The Trustee has announced that he will continue the Hardship Program in connection with the avoidance actions. The Program is designed to encourage investors who have been sued to come forward and to explain to the Trustee why he should not continue the suit against them. Among the factors that the Trustee has announced he will consider are the investor's age, financial condition, medical situation, need to return to work after having retired, inability to pay for the care of dependents, the extent to which withdrawals were made from a BLMIS account to pay for taxes on fictitious sums, and other demonstrated hardship. The Trustee also has set up a toll-free hotline to answer any concerns investors have with respect to avoidance suits. All of this information, as well as the hardship application, is available on the Trustee's web site at www.madofftrustee.com.

In addition, together with each complaint, the Trustee has sent to each "good faith" investor a letter containing the above information and urging the investor to contact the Trustee to discuss the complaint. The Trustee is mindful of the fact that some people who have withdrawn assets periodically over an extended period of time simply have no ability to make any return of assets. Neither SIPC nor the Trustee has any interest in pursuing litigation that is as distressing as it is pointless. But the Trustee also must investigate the facts of each such case, and has established a mechanism to do so.

Further, in anticipation of the "avoidance actions," the Trustee obtained a procedural order in the liquidation proceeding, sent to every party who has been sued, which provides for confidentiality of financial information and mediation of the suits. In most instances, the costs of mediation will be paid for not by the party who has been sued, but by the debtor's estate, with funds advanced by SIPC.

In short, the Trustee is doing, and will do, everything possible to dismiss or settle suits where the financial situation of a party warrants such relief, and otherwise to resolve as expeditiously as possible, all other suits against investors who unknowingly received other investors' money.

The Use of Avoidance Powers In a SIPA Case

It also should be noted that there are reasons unique to SIPA why an “innocent investor” is less often the subject of an avoidance action in a SIPA case than in ordinary bankruptcy.

When a party receives a distribution prior to the collapse of a brokerage firm, it is less likely that the facts are such that a preference or fraudulent transfer may be recovered, at least when all allowed claims are within the limits of SIPA protection.

Here is why:

1. A trustee may recover, in an avoidance action, an amount that exceeds what that person would have received in the liquidation had the distribution not been made. See, for example, 11 U.S.C. §547(b)(5), made applicable to the BLMIS case by 15 U.S.C. §78fff-2(c)(3).

2. In the overwhelming majority of SIPA cases, a theft is identified before a high percentage of customer property is missing. The combination of (i) SIPC advances and (ii) a high percentage of customer property distribution means that the person receiving the pre-liquidation distribution would have received the same amount in the liquidation. Thus, it makes no sense to initiate an avoidance action when the target of such a suit would get the assets back.

To illustrate:

John has a securities account worth \$1,000,000 at Brokerage X. He has had that balance for years. He sells his securities, closes the account, and receives a check for \$1 million, on December 1. After John cashes the check, Brokerage X is placed into a SIPA proceeding on December 15. At the time of the failure, 10% of all assets owed to customers is missing, and therefore 90% of the assets that are supposed to be held for customers are in fact secure.

What does this mean for John, who received a \$1,000,000 distribution during the avoidance period? It means that even if the statutory criteria for bringing an avoidance suit were met, it would make no sense for the trustee to initiate an avoidance action, so long as all allowed customer claims do not exceed the limits of SIPA protection. If John were to return the funds, the trustee would immediately return the exact same amount to him. John would receive \$900,000 from customer property, and SIPC would advance \$100,000 to the trustee for subsequent distribution to John.¹

¹ An avoidance suit would be necessary if there were over-the-limits customers in the proceeding, that is, customers who would not be made whole through a distribution of customer property in the possession of the trustee combined with the advance of SIPC funds. For example, assume all of the facts in the above hypothetical, except that in addition to John, there is a second customer named Joan with a valid \$12 million claim. A 90% distribution of customer property would result in Joan receiving \$10.8 million. Coupled with a SIPC advance of \$500,000, Joan’s total recovery would be \$11.3 million, leaving her still owed \$700,000. If the trustee were to sue John in avoidance, John, based on the above analysis, would still be made whole because of the SIPC

The foregoing example, and innumerable others that could be constructed, show that it would typically take a huge shortfall in customer property, coupled with a very large withdrawal, before an avoidance action is meaningful. That is why avoidance actions in SIPA cases are less common.

3. As illustrated above, the availability of SIPC funds in a SIPA proceeding often reduces the need for avoidance suits unlike the situation in ordinary bankruptcy, where avoidance of preferences is more common. Unfortunately, because of the large sums at stake in BLMIS, and the substantial amounts by which some investors will benefit at the expense of others if he fails to act, the Trustee has no choice but to seek to recover funds by means of avoidance.

A final point before proceeding to the answers to your questions.

As noted above, the Trustee is empowered by both SIPA and the Bankruptcy Code, to the extent consistent with SIPA, to gather assets of the estate for the benefit of all of the creditors, including customers, to the proceeding. The SIPA statutory scheme provides for a priority to be given to those customers who have positive net equity balances in their customer accounts. The BLMIS matter being a Ponzi scheme, there were no earnings or profits, but only other people's money. Thus, the customers who had a positive net equity in their BLMIS accounts are those who did not get all of their money back from BLMIS. These are the customers who are entitled to priority under the SIPA statute. The Trustee utilizes his powers under SIPA and the Bankruptcy Code to gather in assets to form a fund of customer property to take care of these priority claimants in the first instance.

However, as the Trustee for BLMIS, the Trustee is also the representative of all other creditors, including customers, to the proceeding. Once he has fulfilled his obligations to the priority claimants by assembling a customer fund sufficient to return to them all of the money they invested in BLMIS, he can then turn to the effort of satisfying those customers and creditors who were not given priority. In the BLMIS case, the customers and creditors who were not given priority are those "net winners" who were customers of BLMIS but who in fact received more money than they put in. Once the Trustee has satisfied all of the "net losers" who did not get all of their money out, those net losers will then be on the same footing as the net winners, and thereafter, both the net winners and the net losers will be treated as general unsecured creditors who have claims for fraud to the extent of any damages.

The claims for fraud by both the net losers and net winners are predicated upon the fact that Mr. Madoff misrepresented to all of them that he was in fact engaging in a legitimate securities business when in fact he was actually operating a Ponzi scheme. As a result of Mr. Madoff's misrepresentations, all of the customers of BLMIS may have suffered damages which can be recognized as general creditor claims in the BLMIS proceeding.

advance. However, Joan would fare better because the additional sum recovered in avoidance from John would be added to the fund of customer property, and result in a larger distribution to Joan. No actual harm comes to John, and SIPC pays a higher amount. That is the situation in the Madoff case.

As you know, according to the falsified books and records maintained by Mr. Madoff, BLMIS owed all of its customers the purported sum of at least \$65 billion. It is currently the Trustee's estimate that a customer fund of at least \$20 billion will be necessary to satisfy the net losers and put them on an equal footing with the net winners in the BLMIS proceeding. Once the Trustee has achieved the \$20 billion figure, he will then continue to pursue his avoidance actions and his claims for damages against financial institutions and related entities for the purpose of seeking to obtain additional sums in order to satisfy all of the general creditor claims in the proceeding, including claims for fraud. As has been well publicized, the Trustee has instituted suits against a variety of institutions pursuing avoidance actions and seeking damages in excess of \$90 billion. While the outcome of litigations cannot be predicted with any degree of accuracy, it is the goal of the Trustee and his counsel to vigorously pursue all of these litigations in order to recover as much of the damages that have been suffered by all of the customers and creditors of BLMIS. As noted above, the Trustee has had some degree of success already, and it is respectfully submitted that his goal is not only a worthy one, but one which he has demonstrated that if given the opportunity to utilize all of the avoidance powers and litigation authority available to him, he will do his very best to achieve the result. Thus, if the powers afforded the Trustee are left unfettered, he will be in the best position to help all of the victims in BLMIS.

Set forth below is each of your requests for information, followed by the response.

SECTION ONE

1a. (Regarding question 1 of the August 20 letter) Please update the data showing the balance sheet of the SIPC fund, as of December 1, 2010.

Response:

The SIPC Fund, as defined under SIPA, consists of cash on hand or on deposit and amounts invested in United States Government or agency securities.

As of December 1, 2010, rounded to the nearest \$100,000, the SIPC Fund consisted of:

US Government Securities maturing within 10 years at fair value (including accrued interest receivable)	\$1,228,500,000
Cash on hand or on deposit	\$7,700,000
Total	\$1,236,200,000

1b. Additionally, provide the total paid in advances to Madoff customers, the number of accounts paid, the average payment, and the average elapsed time between claim filing and advance payment.

Response:

This question and those that follow use the term "claims" with respect to the information being sought. The answers that follow are predicated upon an analysis of the customer accounts that have been determined, or remain to be determined, by the Trustee and the relationship of those customer accounts to the claims that have been filed. Wherever possible, the Trustee and SIPC encouraged claimants to file claims to preserve any rights the claimants might have. Consequently, there are many more claims than there are customer accounts. It also should be noted that much of the information relating to claims analyzed under a last fictitious statement approach are rough approximations at best. The claims have not been reviewed or analyzed on that basis and some adjustments to the information could become necessary upon actual review. With this background in mind, the answer to question 1b as well as subsequent questions is as follows:

- i. As of December 31, 2010², the total in advances committed by SIPC to BLMIS customers was \$780,193,242.27 and the total advances paid to claimants was \$762,259,841.26. The difference between the SIPC advances committed and the SIPC advances paid is due to the fact that after determination letters are issued, the payments are pending the receipt of fully executed documentation.
- ii. As of December 31, 2010, the total number of accounts committed to be satisfied was 2,053. The number of allowed claims associated with these 2,053 accounts was 2,363 and the total number of accounts for which a payment was made was 1,992 which relate to 2,283 allowed claims. The difference between the SIPC advances committed and the SIPC advances paid arises from the fact that after determination letters are issued, the payments are pending the receipt of fully executed documentation.
- iii. As of December 31, 2010, the average of the SIPC advances committed to these 2,053 accounts was \$380,025.93 and the average SIPC advance paid to the 1,992 accounts was \$382,660.56. The difference between the SIPC advances committed and the SIPC advances paid arises from the fact that after determination letters are issued, the payments are pending the receipt of fully executed documentation.
- iv. As of December 31, 2010, the average elapsed time between the filing of the claims related to the 2,053 allowed accounts and the commitment of advance payment was 8.8 months.

As discussed in earlier correspondence with Congressman Kanjorski and you, there are certain facts that are very important for a complete understanding of the time needed to determine claims. First, this is not a typical SIPA proceeding in which most customer securities or cash are accounted for, because they are on hand at the time of the failure of

² Where available, data as of December 31, 2010 has been used in compiling responses to your questions.

the brokerage house. Instead, BLMIS involved a Ponzi scheme in which the principal assets were other people's money. Furthermore, the Ponzi scheme was of long standing, extending back over at least 30 years. Since SIPA requires that the investor get back what he put into the scheme, the Trustee was required to do a full forensic analysis of all the books and records of the debtor, going back to at least the early 1980s in order to fully determine the amount of money due to each customer.

More than 16,000 "customer" claims were filed in the proceeding. The forensic analysis for many of the claims involved not only a complete review of the books and records of the failed brokerage house, but also documents received from third parties, such as banking institutions, clearing houses and other brokerage houses, as well as documents received from the customers themselves. There are literally millions of documents that have been reviewed by the Trustee and his staff in connection with the evaluation of each of the customer claims filed. Furthermore, access to books and records required coordination and sharing with law enforcement authorities which complicated and, in some instances, necessarily delayed the review.

Because of the longstanding nature of the Ponzi scheme, many of the customer accounts presented multiple generational investments by customers with Mr. Madoff. Thus, it was not simply a matter of examining a single account for a short period of time, but in many instances, an extensive analysis of multiple accounts going back several decades was required, in order to fully determine the amount of money invested by the customer and whether the customer had invested more money than he or she had received from Mr. Madoff.

Finally, the length of time needed to determine claims was not only impacted by the above factors, but significantly, by the fact that a widespread and serious fraud was involved. Determining who was a participant in and beneficiary of the fraud required the Trustee to scrutinize each claim carefully against the firm's books and records and against the information learned in his investigation of BLMIS and its activities.

- 2a. (Regarding question 4 of the August 20 letter) For the 1149 approved accounts with claims of \$500,000 or greater, provide the aggregate sum for these claims and the aggregate sum of claims using the Final Statement Method (FSM).**

Response:

As discussed in more detail below in the response to Question 2c of Section 1, the "Final Statement Method" is based on the last account statement issued by BLMIS to investors. Uniformly, the statements in question reflect non-existent securities "trades" invented by Bernard Madoff to yield fake profits that he decided investors should "receive." When withdrawn, the fake profits that the customers received were actually other investors' money.

Between August 1, 2010, and December 31, 2010, the number of allowed accounts valued over \$500,000 increased to 1,207, and accordingly, 1,207, instead of 1,149, is used below:

- i. Total Number of Allowed Accounts over \$500K: 1,207
- ii. Total Allowed Net Equity: \$5,762,794,392.30
- iii. Total Fictitious Equity under a final fictitious statement method:
\$12,045,355,425.58

2b. For the 744 approved accounts with claims of less than \$500,000, provide the aggregate sum of those claims and the aggregate sum of those claims using the FSM.

Response:

Between August 1, 2010, and December 31, 2010, the number of allowed accounts valued at less than or equal to \$500,000 increased from 744 to 846. Accordingly, 846, instead of 744, is used below:

- i. Total Number of Allowed Accounts under and equal to \$500K: 846
- ii. Total Allowed Net Equity: \$176,538,242.27
- iii. Total Fictitious Equity under a final fictitious statement method:
\$1,577,286,679.78

2c. Prepare a stratification table in segments of \$100,000, and for each segment show total number of accounts, total claims using the Net Investment Method (NIM), and total claims using FSM.

Response:

The term "Net Investment Method" ("NIM") is a term that has been used by certain claimants in the BLMIS case. It refers to the calculation of a customer's net equity based on the total amount deposited by the customer into his account, less the total amount of withdrawals from the account.

As mentioned above, the Final Statement Method ("FSM") refers to the value of the customer's account as shown on the customer's last account statement which in this case, includes fictitious profits invented by Bernard Madoff and non-existent trades fabricated by him that do not reflect market reality.

This question seeks a comparison of the net equity value and the fictitious statement value of all allowed accounts with an adjusted cash balance less than or equal to \$500,000. However, this comparison is not reliable. The number of accounts that would be allowed under a fictitious statement approach obviously is significantly higher than the number of accounts that have been allowed under the net equity approach. Under the fictitious statement approach, the amount allowed will be higher on an account by account basis because claimants would be entitled to recover the fake profit in addition to their principal.

It should be noted that allowance of claims under a fictitious statement approach necessarily reduces the amount of customer property available to satisfy those claimants who have yet to recover their principal since such property is shared pro rata by customers. Enlarging the pool of claimants sharing in customer property means less property for those who have yet to recover their principal and more property for those who, while the firm was in business, withdrew their principal and received other investors' money in the form of fake profits. In other words, investors who already recovered their principal continue to receive fake profits when the firm is in liquidation to the continued detriment of those investors still owed their principal. In addition, because the SIPC advance supplements the distribution of customer property, under a fictitious statement approach, SIPC funds are used to pay customers fake profits the amount of which has been determined by the thief.

Based on the 11/30/2008 customer monthly statements, there were 4,881 customer accounts with a positive fictitious statement method balance, totaling \$73,481,352,153.68.³ The table below provides a stratification of these 4,881 accounts based on their fictitious balance. It should be noted that claims were not filed for some of these 4,881 accounts.

Category	Accounts	Fictitious Statement Balance
\$0K up to \$100K	222	\$9,236,502.70
\$100K up to \$200K	236	\$34,942,027.78
\$200K up to \$300K	214	\$52,391,337.08
\$300K up to \$400K	177	\$61,967,863.82
\$400K up to \$500K	161	\$72,718,064.15
Sub-Total	1,010	\$231,255,795.53
Greater than \$500K	3,871	\$73,250,096,358.15
Grand Total	4,881	\$73,481,352,153.68

- 3a. (Regarding question 5 of the August 20 letter) With respect to the payment of advances, explain the process by which SIPC, through subrogation, establishes a claim to share in customer property. In the priority ranking of claims, where do these claims, as subrogee, stand in relationship to the customer claims? Please cite the authority in SIPA.

³ The \$73.5 billion figure represents the fictitious equity shown on the final fictitious statement for the 4,881 customer accounts with "positive" FSM balances. The difference between this amount and the well-documented figure of \$64.8 billion reflects certain accounts with reported negative "equity" balances totaling in excess of \$8 billion, 99% of which are in accounts in the name of Jeffrey Picower and the children of Norman Levy.

Response:

Under 15 U.S.C. section 78fff-3(a), SIPC is subrogated, to the extent of its advances, to the claim of any fully satisfied customer. SIPC may not exercise its right of subrogation as to a customer until that customer has been fully satisfied.

Subrogation works as follows:

If all customer property were immediately available to a SIPA trustee at the start of a liquidation proceeding, customer claims would be satisfied first, through the pro rata distribution of customer property, and second, to the extent of any shortfall, through advances of funds from SIPC, within statutory limits. See 15 U.S.C. §§78fff-2(c)(1)(B) and 78fff-3(a). In that situation, SIPC would never share as subrogee in customer property because all customer property would have been distributed initially to customers and none would remain for distribution to SIPC.

In practice, however, because assembling customer property may require the trustee to investigate the debtor's business and to sue third parties -- all of which takes time -- SIPC advances may be used initially to satisfy customers notwithstanding that there has been no showing or determination that customer property would be insufficient. 15 U.S.C. §78fff-2(b)(1). Customers may thus be satisfied promptly and not made to wait while the collection of customer property is achieved.

If a customer has been fully satisfied through a SIPC advance by the time customer property becomes available for distribution, then allowing that customer to receive his pro rata share of the property would result in the customer receiving a double recovery on his claim. Instead, SIPC stands in the customer's shoes in the distribution of such property. In that manner, the end result is the same as if customer property first had been fully collected and distributed, and SIPC funds used only to make up the difference between the amounts owed to customers and the customer property available to them.

- 3b. It is reported that in the payment of advances to Madoff customers, SIPC is demanding that recipients execute assignment of claims to customer property. Does such assignment give SIPC a higher priority to customer property than is accorded through subrogation? If so, provide the statutory authority for this improvement in claims priority.**

Response:

A report that SIPC is demanding the execution of assignments is incorrect. The Trustee is an independent fiduciary and it is he who determines claims and in consideration of the satisfaction of claims requests assignments from the satisfied customers. The request for an assignment is consistent with and as provided under 15 U.S.C. §78fff-2(b). The assignment does not give SIPC a higher priority in the distribution of customer property. Rather, a central purpose of the assignment is to give the trustee the capacity to sue,

standing in the shoes of the person whose claim he has satisfied, in order to recover property from third parties for distribution to all customers.

4. **(Regarding question 6 of the August 20 letter) How many accounts are involved in the receipt of the 90,000 disbursements? Beginning with the first year in which these disbursements occurred, list for that year and each succeeding year the number of disbursements, the aggregate value of the disbursements, the number of accounts, the number of disbursements related to account closing and the average amount involved in each such transaction.**

Response:

The table that follows includes the number of disbursements in excess of deposits, the aggregate value of disbursements in excess of deposits, the average disbursement amount, the number of accounts, and the number of disbursements related to the closing of an account.

Year	Number of Disbursements in Excess of Deposits	Aggregate Value of Disbursements in Excess of Deposits	Average Disbursement Amount	Number of Accounts	Account Closing Related Disbursements⁴
1981	10	\$239,466	\$23,947	9	6
1982	36	487,199	13,533	23	13
1983	37	2,431,473	65,715	19	13
1984	38	782,991	20,605	23	9
1985	192	7,135,066	37,162	71	14
1986	375	18,858,068	50,288	92	14
1987	497	14,174,763	28,521	111	5
1988	722	35,995,555	49,855	164	23
1989	992	49,914,278	50,317	184	18
1990	1,122	45,713,503	40,743	225	19
1991	1,469	71,552,235	48,708	283	33
1992	1,858	519,368,321	279,531	313	27
1993	2,500	228,463,943	91,386	424	74
1994	2,667	282,226,802	105,822	447	74
1995	3,133	479,946,926	153,191	456	54
1996	3,932	539,182,466	137,127	528	98
1997	3,003	668,343,286	222,559	703	344
1998	2,443	786,614,902	321,987	483	90
1999	2,995	999,865,155	333,845	625	51

⁴ There could be more than one disbursement related to closing a single account. However, the table above only includes the final disbursement for each respective account.

2000	3,848	1,149,561,399	298,743	848	65
2001	4,340	1,352,096,251	311,543	922	70
2002	4,974	1,391,790,937	279,813	1,082	61
2003	6,278	1,675,967,743	266,959	1,288	40
2004	6,913	1,572,900,380	227,528	1,439	61
2005	7,453	1,576,183,767	211,483	1,627	72
2006	8,739	1,227,904,383	140,509	1,840	79
2007	9,573	1,732,389,729	180,966	2,072	80
2008	9,220	1,901,590,538	206,246	2,090	82
Total	89,359	\$18,331,681,525			1,589

5. (Regarding question 7 of the August 20 Letter) How many applications for hardship relief have been filed, how many have been granted, and how many have been denied? In the case of denials, what is the average size of the account, and what are the Trustee's reasons for denial? Also, what is the standard being used to identify "hardship" cases? Is the standard objective or subjective?

Response:

As of December 31, 2010, 394 hardship applications had been received. Of these 394 applications, 44 did not meet the qualifications to participate in the Hardship Program. Most of the ineligible applications were filed on behalf of entities or were filed by individuals who were indirect investors. Of the 350 eligible applications, 275 (78.5%) were approved and 75 (21.5%) were not approved.

The 75 applications that were not approved relate to 77 customer accounts. Of these 77 accounts,

- 22 were net losers with a net equity of \$41,605,142.23 at an average of \$1,891,142.83. The claims of these claimants were allowed outside of the hardship program.
- 52 were net winners with a net equity of negative \$29,648,007.42 at an average of negative \$570,153.99.
- 3 were net zeros with a net equity of \$0.00 at an average of \$0.00.

The standards are by and large objective and the criteria that are the basis for hardship relief are identified in the Trustee's web site at www.madofftrustee.com. As previously discussed, they include:

- a. Advanced age.
- b. Inability to pay for necessary living expenses, such as housing (including loss of home to foreclosure), food, utilities and transportation.

- c. Inability to pay for necessary medical expenses.
 - d. Necessity to return to work after having previously retired from former employment (special consideration will be given to individuals who can no longer return to their former work).
 - e. Declaring personal bankruptcy.
 - f. Inability to pay for the care of dependents.
 - g. The extent to which withdrawals of fictitious profits were used to pay taxes on fictitious sums.
 - h. Otherwise suffering from extreme financial hardship as demonstrated by other circumstances not addressed by the foregoing.
6. **(Regarding question 10 of the August 20 letter) The Table presented shows that in years 1998 through 2001 deposits and withdrawals were significantly higher than in other years. Please provide a detailed explanation for this change in fund flows. Were these the transactions of institutional investors? If so, provide detailed information in tabular form for each year by type of institution (hedge fund, mutual fund, etc., and whether foreign or domestic) showing sums deposited and withdrawn and rates of return. Were there any relationships presenting unusual characteristics (short-term with high return, etc)? If so, provide detail.**

Response:

The Table presented under question 10 of the August 20 letter related to the years 1992 through 2008. The below tables therefore relate to years 1992 through 2008. The years specifically addressed for 1998 through 2001 are in bold print. The significant increase in deposits and withdrawals in years 1998 through 2001 was due to the activity in one Investment Advisory account: No. 1L0027 – Norman F. Levy. The first table below shows the cash in/cash out activity for just Account No. 1L0027 and the second table shows the total activity in all accounts, with the cash activity for Account No. 1L0027 **excluded** from the results. Norman Levy, now deceased, was an individual investor and not an institutional investor.

Norman Levy Account 1L0027

Year	Cash In	Cash Out
1992	\$1,108,364,660	(\$994,048,201)
1993	\$1,387,358,368	(\$1,517,903,726)
1994	\$2,279,645,611	(\$2,128,805,955)
1995	\$3,542,773,369	(\$3,453,047,453)
1996	\$5,372,928,546	(\$5,471,231,206)
1997	\$7,067,467,981	(\$7,377,869,833)
1998	\$10,102,787,010	(\$10,039,234,425)
1999	\$15,316,343,975	(\$15,227,808,969)

2000	\$23,044,584,696	(\$23,103,627,635)
2001	\$35,095,634,103	(\$35,154,090,159)
2002	\$862,232,070	(\$898,796,993)
2003	\$307,000,000	(\$246,934,119)
2004	\$161,511	(\$49,478,915)
2005	\$137,576	(\$35,629,433)
2006	\$0	\$0
2007	\$0	\$0
2008	\$0	\$0

All Accounts Excluding No. 1L0027

Year	Cash In	Cash Out
1992	\$904,272,560	(\$1,018,689,670)
1993	\$664,370,878	(\$609,219,797)
1994	\$577,959,780	(\$651,932,259)
1995	\$884,907,897	(\$955,450,002)
1996	\$1,303,802,139	(\$1,076,280,471)
1997	\$1,995,752,125	(\$1,259,163,989)
1998	\$2,718,098,944	(\$1,657,646,062)
1999	\$2,606,597,014	(\$1,866,578,080)
2000	\$2,584,913,116	(\$2,598,132,080)
2001	\$2,309,389,766	(\$2,425,894,417)
2002	\$2,453,094,123	(\$2,664,015,048)
2003	\$2,855,614,441	(\$3,423,072,194)
2004	\$4,045,208,942	(\$3,477,761,846)
2005	\$3,616,547,123	(\$4,767,292,175)
2006	\$5,950,968,943	(\$4,385,862,882)
2007	\$7,284,217,506	(\$4,506,919,231)
2008	\$6,308,498,696	(\$10,556,646,750)

SECTION TWO

- 1a. For each year, beginning on January 1, 1992, through the closing of Bernard L. Madoff Investment Securities LLC (BLMIS) in December, 2008, provide opening and closing balances and annual average balances in the Madoff 703 Account at Chase Bank (later JPMorgan Chase). For each of those years, provide the annual earnings and the source of those earnings. Have those earnings been credited to customers in the application of the NIM?

Response:

Monthly account statements for the Madoff 703 Account are available to the Trustee for the period from December 1998 through December 2008. The table below shows the annual and monthly average Closing Ledger Balance in the account.⁵ These balances exclude any short term or other investments related to the Madoff 703 Account (discussed in further detail below).

As of:	Madoff 703 Account Only	
	Closing Ledger Balance	Average Monthly Closing Ledger Balance
12/31/1999	\$2,320,237	\$5,061,827
12/31/2000	\$20,493,643	\$6,707,467
12/31/2001	\$26,581,003	\$8,599,687
12/31/2002	\$2,401,631	\$1,492,461
12/31/2003	\$4,061,657	\$1,369,215
12/31/2004	\$1,084,601	\$1,262,028
12/31/2005	\$323,218	\$1,238,669
12/31/2006	\$394,700	\$498,220
12/31/2007	\$742,309	\$633,968
12/31/2008	\$229,407,266	\$20,116,566

Available funds in the Madoff 703 Account were invested in various short term investments, including:

- Overnight Investment Sweeps;
- Overnight Deposits;
- Certificates of Deposit (approximately 1 week outstanding);
- Commercial Paper (approximately 3-4 days outstanding); and
- Treasury Bills (approximately 1-6 months outstanding).⁶

In addition to the short term investments noted above, certain investors deposited Federal Home Loan Bank Notes into Madoff custody accounts held at JPMorgan Chase (account nos. G 54276 and G 13414). The proceeds from redemption and the related interest were

⁵ Because only one month of records is available for December 1998, information relating to 1998 is not included.

⁶ Prior to 2002, BLMIS held treasury notes with maturities ranging from 3-10 years. Due to incomplete records for Madoff accounts held at JPMorgan Chase, the date, amount and source of funding for the initial purchase cannot be confirmed for all of these treasury notes. However, as the related interest was received by the Madoff 703 Account, the outstanding balances of the treasury notes are included in this analysis. In the event that the purchase price could not be confirmed, the face value of the treasury notes was used to estimate the outstanding balance.

received by Madoff and recorded in the Madoff 703 Account. The face value and related interest of these securities are included in the amounts in the table below.

The following table shows the combined ending balances including the Closing Ledger Balance of the Madoff 703 Account and the outstanding amounts of short term investments and Federal Home Loan Bank Notes. The table also includes the average monthly combined ending balances and the combined annual earnings on the short term investments and the Federal Home Loan Bank Notes.

As of:	Madoff 703 Account and Related Investments		
	Combined Ending Balances	Average Monthly Combined Ending Balances	Combined Annual Earnings
12/31/1999	\$794,791,409	\$718,345,089	\$47,122,618
12/31/2000	\$281,064,815	\$664,061,973	\$43,085,153
12/31/2001	\$415,806,003	\$311,525,813	\$12,409,793
12/31/2002	\$403,674,195	\$400,460,464	\$8,895,959
12/31/2003	\$270,130,888	\$328,438,232	\$5,045,753
12/31/2004	\$766,510,629	\$522,076,623	\$6,885,896
12/31/2005	\$231,086,387	\$441,768,824	\$12,460,792
12/31/2006	\$1,965,795,098	\$888,512,252	\$41,626,409
12/31/2007	\$4,432,658,084	\$3,992,008,548	\$184,030,207
12/31/2008	\$229,407,266	\$4,056,000,343	\$106,121,744
		TOTAL:	\$467,684,323

Property in the 703 Account was customer property, as defined in 15 U.S.C. §7811(4), and therefore, interest earned on such property would be customer property as well, to be shared pro rata by customers. Indeed, such property was used as customer property throughout the operation of the Ponzi scheme as the liquidity generated from such interest earned was made available to pay customers and the income still held in the 703 account, upon the liquidation of BLMIS, was part of the customer property seized by the Trustee. Although any earnings would be shared by customers in satisfaction of their net equity claims, the amount of customers' net equities would not be increased due to the fact that interest may have been earned on the 703 Account. There is no basis in the law for such an adjustment. See the definition of net equity at 15 U.S.C. §7811(11). Moreover, the exercise would be impossible. Tracing dollars into and out of the account as to each and every customer would be impossible given the level of activity in the account and the fungible nature of dollars.

- 1b. If, for the same period, Madoff, BLMIS, or other Madoff-controlled businesses had other accounts at U.S. or foreign banks or other financial institutions, provide annual balance data for these accounts. Provide the annual earnings for each year, and the amount of those earnings credited to BLMIS customers in the application of NIM.**

Response:

In addition to the Madoff 703 Account and the two BLMIS custody accounts held at JPMorgan Chase as discussed in response to Section Two, Question 1a above, an additional 127 accounts held by Madoff, BLMIS or other Madoff related entities have been identified to date as a result of the investigation. It is important to note that the records available to the Trustee are incomplete and the Trustee does not have a complete population of monthly statements for these 127 accounts. In fact, the level of completeness varies significantly for each account and in some cases, the Trustee has statements for only a few months, or in some cases, no monthly statements for accounts that have been identified. As such, the data presented below and the ability to respond to your inquiry is limited to the information available to the Trustee as of the date of this letter.

Of these 127 accounts, there were eleven (11) accounts which had transfers to and from the Madoff 703 Account, and the year-end balances and annual earnings information is shown on the schedule attached hereto as Exhibit A to the extent the information is available.

Of the remaining 116 accounts that have been identified, there are ten (10) accounts that had a balance greater than \$1 million during at least one year-end period for which the Trustee has available records. The other accounts identified either had no available monthly statements or did not report a balance at any year-end date of \$1 million or more during the period that monthly statements are available.

It should also be noted that, in addition to these 127 accounts, there were accounts held by Madoff Securities International Ltd. ("MSIL") at various banks and other financial institutions in London. Transfers to and from the Madoff 703 Account and MSIL were through two primary banking institutions in London: Barclays Capital and Royal Bank of Scotland. The average year-end balance in MSIL's USD account at Barclays Capital between 2002 and 2008 was approximately £1.9 million and the average year-end balance in MSIL's USD account at Royal Bank of Scotland between 1996 and 2008 was approximately £1.8 million. Based on the available MSIL records, the combined interest earned on all bank accounts was approximately £8.8 million from 1999 to 2008.⁷

To the extent that the interest earned on these additional Madoff related accounts was transferred into the 703 Account, those amounts have been considered customer property, as defined in 15 U.S.C. §78III(4), and made available to pay customer claims. However, as noted above, tracing these dollars into and out of the account as to each and every

⁷ Available MSIL records report interest on USD bank accounts separately for years 2000 to 2002 only. The total interest earned during these years on USD accounts was approximately £125,000. In all other years, interest received from all bank accounts, including accounts denominated in currencies other than USD, were grouped together in one line in MSIL's accounting records. Therefore, the amount included in the response above includes interest earned on all MSIL bank accounts.

customer would be impossible given the level of activity in the 703 Account and the fungible nature of cash in the account.

2. **During the period 1992 – 2008, when Madoff was actively pursuing his Ponzi fraud, he was engaged in market making and proprietary trading. For each of these years provide data on trading volumes and the annual gross and net revenues from this trading activity. Did any of this trading involve the “split-strike conversion” strategy? Can the funding for this trading be traced to customer deposits in BLMIS?**

Answer:

The table below includes annual revenue, net income and trading volumes as reported in the FOCUS Reports filed by Madoff with regulatory authorities. Madoff FOCUS Reports were available back to 1983. Therefore, the chart includes data from 1983 to 2008.

Calendar Year	Reported Revenue	Reported Net Income	Average Monthly Reported Trade Ticket Executions
1983	\$16,199,780	\$7,478,860	8,135
1984	17,111,112	2,768,562	11,961
1985	19,134,313	5,050,340	18,588
1986	24,482,469	9,006,605	34,312
1987	23,826,151	6,748,913	44,240
1988	25,993,191	7,656,011	61,382
1989	29,820,883	7,291,998	147,796
1990	36,381,387	5,815,034	206,892
1991	45,445,605	11,581,744	328,892
1992	53,883,499	13,218,255	403,789
1993	67,365,633	16,011,925	438,867
1994	82,193,420	19,242,696	398,360
1995	94,534,180	29,896,450	506,476
1996	93,155,506	25,692,597	563,095
1997	102,105,686	31,403,757	781,390
1998	104,842,134	30,000,000	1,213,357
1999	164,600,984	50,000,000	1,932,106
2000	209,788,597	41,000,000	2,300,629
2001	169,110,236	47,000,000	2,015,081
2002	106,009,938	27,000,000	2,238,367
2003	128,868,567	40,000,000	2,986,238
2004	138,684,401	49,000,000	3,173,810
2005	113,506,829	27,000,000	3,217,668
2006	163,150,034	57,000,000	3,527,327

2007	167,439,512	63,000,000	3,489,387
2008 ⁸	98,344,669	34,000,000	5,930,580

In response to the question “Did any of this trading involve the “split-strike conversion” strategy?”

No. The trading within the market making and proprietary trading businesses did not involve BLMIS’s purported “split-strike conversion” strategy.

In response to the question “Can the funding for this trading be traced to customer deposits in BLMIS?”

The table below includes amounts transferred directly or indirectly from the Madoff 703 Account at Chase Bank, the primary bank account used by House 17 (the investment advisory business), to the Madoff 621 Account at The Bank of New York, the primary bank account used by House 5 (the proprietary trading and market making business). House 5 received funds directly and indirectly from the IA business. The direct payments were in the form of checks from the Madoff 703 account that were deposited directly to the Madoff 621 Account. The indirect payments were wire transfers from the Madoff 703 Account to Madoff affiliated domestic brokerage accounts and/or to Madoff Securities International Limited (“MSIL”) and subsequent wire transfers from the domestic brokerage accounts and/or MSIL to the Madoff 621 Account. As data is unavailable for complete calendar years prior to 2000, the chart includes data from 2000 to 2008.

Calendar Year	Direct Transfers	Indirect Transfers	Total
2000	\$42,996,679	\$32,500,000	\$75,496,679
2001	\$12,410,095	\$59,993,500	\$72,403,595
2002	\$8,855,299	\$51,628,142	\$60,483,441
2003	\$4,982,025	\$92,384,791	\$97,366,815
2004	\$6,852,980	\$82,113,022	\$88,966,002
2005	\$5,406,024	\$63,901,013	\$69,307,037
2006	\$0	\$73,217,622	\$73,217,622
2007	\$0	\$121,243,288	\$121,243,288
2008 ⁹	\$0	\$75,459,701	\$75,459,701
Total	\$81,503,101	\$652,441,077	\$733,944,178

⁸ Reported revenue and net income amounts represent year-to-date information through October 31, 2008, the date of the last filed FOCUS Report.

⁹ \$19,087,449 was received after the last FOCUS Report was filed for October 31, 2008.

Because the direct and indirect transfers from House 17 to House 5 were in cash, which is fungible, the transfers cannot be directly traced to House 5 trades. However, the funds transferred from House 17 were recorded by House 5 as revenue and represented a substantial portion of House 5's liquidity. Without these funds from the IA business, House 5 would have incurred annual net losses (i.e., reported net income less funds from the IA business results in a net loss for each period with available data). Notwithstanding the inability to trace these funds to House 5 trades or individual BLMIS customer accounts, the Trustee has treated the proceeds of the sale of the market making and proprietary trading businesses as customer property, and therefore those funds will be included in the amounts distributed to customers with approved claims.

3. **Provide up-to-date and projected total aggregate cost data, by entity, for amounts billed and amounts paid to Trustee Picard, the Baker Hostetler law firm, and all other entities involved in the SIPC liquidation of BLMIS and its related businesses.**

Response:

The amounts are as follow:

	Entity	Amounts Paid Through 12/31/10
<i>Trustee</i>	Trustee	\$3,275,173.77
<i>Trustee's Counsel</i>	Baker & Hostetler LLP	\$127,938,847.58
<i>Special Counsel</i>	Attias & Levy	\$631,183.64
	Eugene F. Collins	\$216,383.85
	Higgs & Johnson	\$238,793.40
	Kugler Kandestin, LLP	\$19,013.09
	Hogan Lovells International LLP	\$2,392,861.22
	Mishcon de Reya	\$65,926.23
	SCA Creque	\$153,197.02
	Schifferli Vafadar Sivilotti	\$13,928.00
	Schiltz & Schiltz	\$341,908.01
	Williams, Barristers & Attorneys	\$644,767.61
	Windels, Marx, Lane & Mittendorf, LLP	\$6,004,460.48
<i>Consultants</i>	AlixPartners	\$48,554,739.11
	FTI Consulting	\$84,590,786.44
	Renaissance Assoc., Ltd.	\$2,580,432.16
<i>Other Consultants</i>		\$8,974,193.33
<i>Other</i>		\$1,683,848.95

Total:		<u>\$288,320,443.89</u>
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Estimated Future Costs (2011 – 2014)

Entity	Amount
Irving H. Picard, Trustee	\$12,523,164.81
Baker & Hostetler LLP	\$603,217,651.28
Special Counsel	\$39,893,950.00
Consultants	
AlixPartners	\$123,028,096.57
FTI	\$250,327,741.98
Renaissance	\$1,275,000.00
Other Consultants	\$65,362,500.00

Total: **\$1,095,628,104.64**

I would note that these administrative expenses are not paid for by using “customer property.” SIPC advances the funds for these costs.

4. **During a recent Capital Markets Subcommittee hearing, at which testimony was presented by several members of SIPC’s Modernization Task Force, there was general agreement that avoidance actions by the Trustee were limited to two years prior to the debtor’s bankruptcy under the Federal Bankruptcy Code and to six years under applicable New York statutes. Accordingly, in the BLMIS case, it would appear that disbursements made prior to December, 2002, would be protected from avoidance actions by the statutes of limitation.**

Since most of the accounts subject to avoidance actions are those determined to have a negative “net equity” under the Trustee’s NIM, a very serious consideration is the propriety of using disbursements made earlier than December, 2002, in the calculation of net equity, which, depending on the outcome, may cause the account to be subject to an avoidance action.

Given the seriousness of this issue, as it relates to proper adherence to the protections intended and accorded by the statutes of limitation, I ask that the following information be provided with the greatest precision possible. For the 1000 accounts under review by the Trustee for possible avoidance actions, indicate the number of accounts for which disbursements prior to December, 2002, were used in the NIM calculation of net equity, the year/s of disbursement/s, and the aggregate amount disbursed in each year.

Response:

It is important to understand that as previously mentioned, the calculation of a customer's net equity and the trustee's use of the avoidance powers are pursuant to separate statutory authority, and involve different concepts. Each customer's "net equity" as of the filing date is based upon the account activity for the entire account history, and is not and cannot be limited to the final two-year and/or six-year period preceding the bankruptcy. Computation of net equity merely measures the account holder's total cash deposits less withdrawals. Once the calculation of each customer's net equity is determined, the trustee can then determine which transfers made by the Estate are avoidable during the two-year and/or six-year period preceding the filing date.

Under SIPA, the customer's net equity reflects the amount of property on deposit with a broker-dealer and therefore owed by the broker-dealer to the customer when the firm fails financially. Disbursements made by a broker to a customer in the ordinary course of business and according to ordinary business terms would not be subject to avoidance by a trustee and, by the same token, would not factor into what the customer is owed as his "net equity," because the disbursed property is no longer in the broker's possession and therefore no longer owed by the broker to the customer.

As a matter of law, in the case of a Ponzi scheme, however, there is no ordinary course of business. In that situation, under SIPA, what the customer is owed is still the property custodied by the customer with the broker. But to the extent the investor received transfers of property from the broker, before the broker failed, which, for example, were for less than reasonably equivalent value or would result in the customer receiving more than he would in liquidation, then the trustee may seek to avoid such transfers.

In the BLMIS case, with the exception of the avoidance of preferential transfers made during the 90 days preceding the filing date, the Trustee is not seeking to recover from any innocent transferee any amount of the customer's principal, that is, the amount deposited by the transferee as a customer with the broker. Instead, against such transferees, the recovery is limited only to fake profits constituting other investors' money. Even assuming that, for the sake of argument only, the Trustee were to seek to recapture principal and be successful, the transferee would have a customer claim for the returned principal, as discussed above under the Use of Avoidance Powers In a SIPA Case.

- 5. How many accounts under consideration for avoidance action were established with Madoff prior to the inception of the Ponzi scheme? In making the NIM determination of net equity for these accounts, has the Trustee used any of the pre-Ponzi disbursements? If so provide details: number of accounts, year and amount of disbursements.**

Response:

Based on the Trustee's investigation and upon review of the earliest records available to him, the Trustee has found no evidence indicating that the BLMIS Investment Advisory

business has been operated as anything but a Ponzi scheme. Therefore, the Trustee does not believe that there are any accounts under consideration for avoidance action that were established with BLMIS prior to the inception of the Ponzi scheme. However, it should be noted that there were 380 accounts that were established with BLMIS prior to the earliest document/customer account statement included in the net equity calculation. For these accounts, the trustee has taken the most conservative approach – and most beneficial to the account holder – for the dollars allegedly held in such accounts at the time of the earliest records. The net equity determination grants a “Principal Credit” to the account holder for the cash and reported cost basis of the securities allegedly held on behalf of those customers on the first statements included in the net equity determination as if the “equity” in the account had been real. A total of \$164,023,720 of initial “Principal Credit” has been credited to these 380 accounts established prior to the earliest customer account statement included in the net equity determination.

- 6a. During its existence, how many broker-dealer bankruptcies has the SIPC resolved? In how many of those cases has the NIM been used to determine customer net equity? If there are such cases, describe the circumstances.**

Response:

Since its inception, SIPC has resolved to completion 314 liquidation proceedings and Direct Payment Procedures under SIPA. A calculation of net equity representing the difference between what the broker owes the customer and what the customer owes the broker is consistent with SIPA, see 15 U.S.C. §78lll(11), and therefore, has been applied in determining net equity in every SIPA case.

In the BLMIS case, the Trustee gave effect to the last account statement to the extent of treating the customers’ claims as ones for securities instead of cash. The statement provided proof of the customer’s reasonable expectation that securities were being held for him. As such, consistent with the law in the Second Circuit, the customer became eligible for up to \$500,000 of protection from SIPC, instead of \$100,000 which was the limit of protection for cash claims at that time. The Trustee did not honor the last account statement beyond that, because the statements reflected fake profits and non-existent securities transactions invented by Bernard Madoff to yield fake returns pre-determined by him.

SIPC does not keep a record of the number of cases in which the last account statement was not followed because it did not reflect market reality. However, below are some cases presenting such facts:

In re First Ohio Secs. Co. (Plumbers & Steamfitters Local No. 490 Severance and Ret. Fund v. Appleton, Case No. 93-3313, 1994 U. S. App. LEXIS 31347 (6th Cir. Nov. 1, 1994) (sale of fictitious CDs));

In re New Times Securities Servs. Inc., 371 F.3d 68 (2d Cir. 2004) (non-existent money market funds). The Court noted the “potential absurdities created by reliance on the entirely artificial numbers contained in the fictitious account statements.” 371 F.3d at 88.

Northstar Securities, Inc., Case No. 01-3722-BJH (Bankr. N. D. Tex.): A fictitious bank CD sold by a principal of the brokerage involving a Ponzi scheme. The trustee allowed customer claims for the “CDs” based upon the amount of cash deposited with the brokerage for investment in the CD, minus withdrawals made by the customer in the form of redemptions. Payments of fictitious interest to the customer were deemed by the trustee to be a return of principal.

In re Old Naples Securities, Inc., 311 B. R. 607 (M. D. Fla. 2002): A Ponzi scheme involving the fake “sale” of bonds yielding fictitious returns. The Court characterized as “illogical” “permitting claimants to recover not only their initial capital investment but also the phony ‘interest’ payments they received and rolled into another transaction...” 311 B.R. at 617.

In re C. J. Wright & Co., 162 B. R. 597 (Bankr. M.D. Fla. 1993): Case involving a Ponzi scheme in which claimants were issued documents showing their participation in a “Deposit Account” investment program, with a fixed interest rate to be received by the investor. The Court held the claimants to be customers, entitled to receive only the principal they invested since that was the amount converted by the broker. Claimants would not be entitled to the purported interest on their investments and any such interest received would be a reduction against the amount recoverable in the SIPA case.

Cases discussed below in Question 6b.

- 6b. In assembling customer property in any of the previous resolutions, has SIPC ever resorted to avoidance actions against the debtor’s customers based on a NIM calculation or any legal basis other than complicity with the debtor?**

The below information may be incomplete because SIPC does not keep a record of such data. However, examples of cases in which trustees have initiated such avoidance suits include the following:

Adler Coleman Clearing Corp.: Hanover Sterling, a brokerage that cleared its trades through Adler Coleman, made a market in “house stocks.” Shortly before its demise, Hanover caused Adler to send statements to Hanover customers purporting to show the sale in these customers’ accounts of the house stocks at very high prices. The stocks supposedly were bought by other customers, but those customers never ordered the purchases. The trustee sought to avoid the trades. The Bankruptcy Court upheld the position of the trustee, noting that the trades were unenforceable, among other reasons, because they were subject to avoidance under the Bankruptcy Code, New York State law, and SIPA, and because they were illegal transactions under New York State law and as a matter of contract. See In re Adler Coleman Clearing Corp., 218 B. R. 689 (Bankr.

S.D.N.Y. 1998). See also In re Adler Coleman Clearing Corp., 247 B. R. 51 (Bankr. S.D.N.Y. 1999), aff'd, 263 B. R. 406 (S.D.N.Y. 2001).

Donahue Securities, Inc. and S. G. Donahue & Co., Inc., Adv. Case No. 01-1027 (Bankr. S.D. Ohio): 26 former customers received payments to which they were not entitled. The payments consisted of false profits and were of amounts that exceeded the customers' cash investment. The trustee sent letters to the 26 former customers asking for repayment of the false profits. Nine customers negotiated repayment amounts with the trustee. The remaining 17 customers were sued by the trustee. All of the cases were settled.


Park South Securities, LLC: Trustee sued to avoid transfers made to investors who had received payments from the broker that actually consisted of other investors' money. Following the denial of a motion to dismiss most counts of the complaint, the matter was settled. See In re Park South Securities, LLC, 326 B. R. 505 (Bankr. S.D.N.Y. 2005).

S. J. Salmon & Co. Inc.: The firm was placed in liquidation in 1972, shortly after the enactment of SIPC on December 30, 1970. The firm was a market maker for securities sold to some of its customers. With its closure imminent, the firm recorded on the firm's books and records purported sales of the customers' securities positions, knowing that the securities would plunge in value upon the demise of the firm. Following the initiation of the SIPA proceeding, the customers demanded the inflated cash that had been credited to their accounts as a result of the fictional transactions. The trustee sought to avoid the phony sales as fraudulent and void under the Bankruptcy Act and New York State law. The Bankruptcy Court (then Referee in Bankruptcy) upheld the trustee's position, among other things, rejecting the claimants' argument of "fair consideration" and remarking that the evidence showed that the purported "market value had no relationship to reality and that the securities in question simply could not be sold at the purported 'market' quotation." See SIPC v. S. J. Salmon & Co., 1973 U. S. Dist. LEXIS 15606, *32 (S.D.N.Y. Aug. 8, 1973). See also SIPC v. S. J. Salmon & Co., No. 72 Civ. 560, Decision #2 on Trustee Motion for Summary Judgment Avoiding Certain Transactions Which Occurred February 2d, 1972 (S.D.N.Y. Feb. 5, 1974).

The Honorable Scott Garrett
January 24, 2011
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I apologize for the time that it has taken to reply to your letter, however, assembling the information and data that you requested required a sizeable commitment of time and resources by both the SIPC and Trustee staffs. If we can assist in any other way, please let me know.

Sincerely,



Stephen P. Harbeck
President and Chief Executive Officer

SPH/pmd

cc: The Hon. Spencer Bachus
The Hon. Barney Frank
The Hon. Maxine Waters
Irving H. Picard, Trustee
David J. Sheehan, Esq.

Att.

Madoff Related Accounts - Year End Balances and Annual Earnings
Accounts with Transfers to and from the Madoff 703 Account
Amounts are limited to account statements available to the Trustee

Name on Account	Account Information				Description of Amount	YEAR												TOTAL
	Bank Name	Acct Number(s)	Purpose of Account	Date Range of Available Statements		1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	
Bernard L. Madoff / Ruth Madoff	Bank of New York	1200202690	Bennie and Ruth Personal Checking	12/97-7/10	Year End Balance	39,655	65,919	93,922	239,081	29,692	773,102	3,278,144	1,297,373	1,171,094	1,999,211	852,506	52,842	
					Annual Earnings	-	-	-	-	-	-	-	-	-	-	-	-	
Bernard L. Madoff 2	Bank of New York	866-1126-621	Primary Account (House 5)	1/98-1/09	Year End Balance		680,335	6,364,198	1,498,833	6,131,902	5,209,602	4,139,060	6,410,329	16,366,286	2,617,740	8,129,987	6,439,530	
					Annual Earnings		-	-	-	-	-	-	-	-	-	-	-	
Bernard L. Madoff Investment Securities LLC	Bank of New York	234239	Investment Counsel Account	3/05-5/07	Year End Balance									(168)				
					Annual Earnings													
Bernard L. Madoff	Bankers Trust Company	00-310-599	Funded by 703; outflows primarily to IA customers	12/98-7/00	Year End Balance		708,926											
					Annual Earnings													
Bernard L. Madoff	Barclays (Lehman)	831-04598	Brokerage Account	1/01-11/08	Year End Balance				371,006,169	340,367,242	220,033,832	28,234,070	26,939,179	11,569,885	48,908	51,395	3.70	
					Annual Earnings				20,497,464	19,908,743	12,358,038	7,106,281	2,102,391	1,529,473	192,504	2,598	1,162.23	
Bernard L. Madoff	Barclays (Lehman)	831-76152	Brokerage Account	6/03-5/06	Year End Balance							49,960,815	50,693,956	16,368,041				
					Annual Earnings							1,892,500	7,515,958	4,261,230	131,311		13,800,999	
Bernard L. Madoff Investment Securities LLC	Barclays (Lehman)	831-04435	Brokerage Account	5/07-11/08	Year End Balance											103,078,880	317	
					Annual Earnings											53,602	87,460	
Bernard L. Madoff 3	Bear Stearns	037-72698-163	Brokerage Account	6/98-4/06	Year End Balance		561,631,631	551,733,445	536,818,066	385,049,812	372,993,578	342,354,863	267,351,560	21,573,290				
					Annual Earnings		15,679,351	31,191,962	32,524,644	34,727,625	25,939,695	12,594,129	10,623,376	9,595,738	30,886		172,907,626	
Bernard L. Madoff	Fidelity	X08-289043	Brokerage Account	12/99-1/09	Year End Balance		205,555,278	411,010,358	386,650,402	342,929,789	229,638,251	71,345,053	79,573,671	44,968,642	3,153	3,254	3,309	
					Annual Earnings		2,695,654	16,320,420	24,443,254	23,523,790	10,936,631	7,682,045	7,213,623	8,963,020	19,296	102	55	
Bernard L. Madoff Investment Securities LLC	M & T Securities	AZD474039	Brokerage Account	5/07-3/09	Year End Balance											101,845,006	4,030,782	
					Annual Earnings											23,048	33,467	
Bernard L. Madoff	Morgan Stanley	663010719	Brokerage Account	12/99-1/09	Year End Balance			99,250,006	578,186,906	503,465,897	500,026,904	359,126,442	149,439,444	347,670	364,447	370,913		
					Annual Earnings				52,301	2,687,559	74,657	7,555,465	1,600,245	3,265,279	1,859,351	16,867	6,555	
																	16,888,300	
																	\$ 369,297,955	

NOTES:

- The earliest available statement was in 1997. Therefore, 1997 is the first period shown in this schedule.
- The name on this account changed to Bernard L. Madoff Investment Securities LLC in May 2001.
- The name on this account changed to Bernard L. Madoff Investment Securities LLC in May 2004.
- The 2008 Year End Balance represents account balance as of 1/30/2008.