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Press release from the office of Irving H. Picard, SIPA Trustee for the liquidation of Bernard L. Madoff Investment Securities LLC (BLMIS)

**SIPA TRUSTEE FOR MADOFF LIQUIDATION SEEKS SUPREME COURT
REVIEW OF SECOND CIRCUIT DECISION
REGARDING “SAFE HARBOR/ STOCKBROKER” DEFENSE
IN MADOFF PONZI SCHEME**

NEW YORK, NEW YORK – March 17, 2015 – Irving H. Picard, SIPA Trustee for the liquidation of Bernard L. Madoff Investment Securities LLC, today filed [a petition for a writ of certiorari](#) with the Supreme Court of the United States, seeking a review of the December 8, 2014 Second Circuit decision which bars the SIPA Trustee from recovering and distributing almost \$2 billion to the victims of Madoff’s Ponzi scheme and calls into question an additional \$2 billion of potential recoveries and distributions.

The Second Circuit’s decision upheld a ruling by a lower court which dismissed the SIPA Trustee’s complaints against certain “net winners” in the Madoff fraud – BLMIS customers who reaped “profits” from the Ponzi scheme by withdrawing more than they put in – and held that these defendants were exempt from the longstanding precedents in bankruptcy law and the Securities Investor Protection Act (SIPA), which hold that stolen cash can be recovered by a SIPA Trustee and must be distributed equitably among eligible claimants.

Certain “net winner” defendants asserted that since BLMIS was a stockbroker, their Ponzi scheme “profits” were protected under Bankruptcy Code section 546(e), the “safe harbor” defense, which protects transfers relating to securities transactions. These defendants, using this so-called “stockbroker defense,” alleged that their Ponzi scheme profits qualified for protection under section 546(e), even though no securities transactions occurred and the “profits” are nothing more than funds stolen from other BLMIS victims.

Noting the repercussions of the Second Circuit’s ruling, which precludes the recovery and distribution of \$2 billion and calls into question \$2 billion more of funds stolen by Madoff, the SIPA Trustee’s petition states, “The Second Circuit’s ruling in this case extends the stockbroker defense to encompass cash-for-cash transactions, in which no securities were ever bought or sold. The repercussions of that ruling for this case alone are profound . . . The Second Circuit’s ruling moreover sweeps in a broad array of cases involving insolvent brokers, gutting SIPA in the process.”

“This Court should grant certiorari to clarify the applicability of the stockbroker defense in such cases. Denying review would only perpetuate confusion and uncertainty at a time when investors can afford neither,” said Goldstein & Russell Partner Thomas C. Goldstein, Lead Appellate Special Counsel to the SIPA Trustee.

In addition, Mr. Goldstein said, “Congress did not write the stockbroker defense to address a case like this one, in which there were *no* securities transactions to unwind. Put another way, Congress obviously did

not intend to protect the *beneficiaries* of a Ponzi scheme. Recovering funds paid to BLMIS customers who received fictitious profits from Madoff’s massive fraud would not create ripple effects through the marketplace. To the contrary, it would facilitate the herculean task of achieving equity for the victims of his fraud.”

Today’s filing asks the Supreme Court to review the following questions:

(1) Does the “stockbroker defense” in the Bankruptcy Code, 11 U.S.C. § 546(e), apply to payments that involve only fictitious securities transactions?

(2) Is the application of the “stockbroker defense” in the Bankruptcy Code, 11 U.S.C. § 546(e), to payments that involve only fictitious securities transactions barred as inconsistent with the Securities Investor Protection Act, 15 U.S.C. § 78fff(b)?

In addition to Mr. Goldstein, the SIPA Trustee would like to thank the attorneys who worked on his behalf on this petition including: David J. Sheehan, Tracy L. Cole, Thomas D. Warren, and Seanna R. Brown of Baker Hostetler LLP and Tejinder Singh of Goldstein & Russell.

Further information on the ongoing Madoff Recovery Initiative and a copy of the [SIPA Trustee’s writ of certiorari](#) filing can be found on the SIPA Trustee’s website: www.madofftrustee.com.

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