UNITED STATES DISTRICT 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 (SMB) SIPA LIQUIDATION (Substantively consolidated)
AARON BLECKER, et al., Appellants, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1236 (PAE)
DIANA MELTON TRUST, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1151 (PAE)

EDWARD A. ZRAICK, JR., et al., Appellants, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1195 (PAE)
ELLIOT G. SAGOR, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1263 (PAE)
MICHAEL C. MOST, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1223 (PAE)

BRIEF OF APPELLEE IRVING H. PICARD, TRUSTEE, IN SUPPORT OF ORDER AFFIRMING TRUSTEE'S METHODOLOGY FOR INTER-ACCOUNT TRANSFERS

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Irving H. Picard, as trustee ("Trustee") for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et seq.* ("SIPA"),[1] and the estate of Bernard L. Madoff ("Madoff") under chapter 7 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), respectfully submits this brief in opposition to the briefs filed by (i) Aaron Blecker, *et al.*, the Diana Melton Trust, and Edward A. Zraick, Jr., *et al.* (the "Joint Brief"), (ii) Elliot G. Sagor, and (iii) Michael C. Most (collectively, "Appellants").[2]

Appellants appeal from a decision of the United States Bankruptcy Court for the Southern District of New York (Bernstein, J.) (the "Bankruptcy Court") issued on December 8, 2014 granting the Trustee's Motion Affirming Application Of Net Investment Method to Determination of Customer Transfers Between BLMIS Accounts (the "Inter-Account Decision"). (AA 559-587.)[3] The Inter-Account Decision should be affirmed.

PRELIMINARY STATEMENT

Under binding Second Circuit case law issued in this liquidation, when determining net equity claims of BLMIS customers in accordance with SIPA, the Trustee must give credit for cash invested in a BLMIS account net of any cash withdrawals and ignore any fictitious gains that BLMIS reported to customers. *In re Bernard L. Madoff Inv. Sec. LLC*, 654 F.3d at 238-39 (2d Cir. 2011) ("*Net Equity Decision*") *reh'g and reh'g en banc den.* (2d Cir. Nov. 8, 2011), *cert dismissed*, 132 S. Ct. 2712, *cert. den.*, 133 S. Ct. 25, 133 S. Ct. 24 (2012) (upholding the "net

[1] For convenience, all subsequent references to SIPA shall omit "15 U.S.C._____"

[2] The Trustee will also address the Amicus Curiae Brief Of Avoidance Action Defendants In Support of Reversal ("Amicus Br.") filed by defendants in avoidance actions ("Amici") in each of the above captioned appeals. *See, e.g.,* Case No. 15-01195, ECF No. 15.

[3] For convenience, the Trustee will cite to documents in the Appendix to the Joint Brief as "AA." The Trustee has filed a supplemental appendix, which will be cited to as "T. App."

investment method"). This ruling is consistent with the longstanding bankruptcy principle that "equality is equity" and its application here can be reduced to a simple precept: customers may not retain fictitious profits, particularly when other customers have not yet received the return of their principal investments. *See Cunningham v. Brown*, 265 U.S. 1, 13 (1924). As the Second Circuit recognized, to calculate net equity in another manner in this case would have the "absurd effect of treating fictitious and arbitrary assigned paper profits as real and would give legal effect to Madoff's machinations." *Net Equity Decision*, 654 F.3d at 235.

Consistent with that mandate, the Trustee applied the net investment method to all BLMIS accounts to calculate net equity, including those accounts that received one or more inter-account transfers from another BLMIS account. Specifically, the Trustee utilized the books and records of BLMIS to identify the amount of principal in a transferor account at the time of an inter-account transfer and gave credit to the transferee account up to the amount of principal available. *See* SIPA § 78fff-2(b) (requiring the Trustee to calculate net equity claims based on the books and records or otherwise to his satisfaction).

This appeal is a variation on a theme familiar to the BLMIS liquidation: those claimants that received fictitious profits from Madoff's Ponzi scheme would like to either avoid returning them to the BLMIS estate or receive credit for those fictitious amounts in the calculation of their claim against the estate. To that end, Appellants ask this Court to disregard both the Second Circuit's decision that required the net investment method for the calculation of net equity and a District Court decision that directly addressed calculating inter-account transfers so that they can be credited with fictitious profits. In a Ponzi scheme, however, those fictitious profits are in reality another customer's principal. The fact that these profits were transferred between BLMIS

accounts does not change the fact that they were fictitious and certainly cannot transform them into principal—principal being the only basis for Appellants' net equity claims.

Appellants' other attempts to attack the Trustee's net investment method as applied to inter-account transfers are without merit. They falsely recast the Trustee's net equity determination as an avoidance action to recover fictitious profits without any legal basis. Once this argument is properly set aside, Appellants' assertions regarding a statute of limitations defense, the Trustee's standing, and state public policy all fall away. Contentions regarding the impact of ERISA on the Trustee's methodology also fail, primarily because ERISA contains a provision that specifically subordinates its application to SIPA.

As the Bankruptcy Court correctly held, a methodology that allows accounts to be credited with fictitious profits simply cannot be reconciled with the Net Equity Decision. The Bankruptcy Court's decision should be affirmed.

QUESTIONS PRESENTED

1. Whether the Bankruptcy Court correctly held as a matter of law that the "net investment method" approved by the Second Circuit in the Net Equity Decision applies to the calculation of transfers between BLMIS accounts, such that credit is given only up to the amount of principal in the transferee accounts at the time of the transfer and no credit is given for fictitious profits, when determining each customer's "net equity" under SIPA.

2. Whether the Bankruptcy Court correctly held that, even if ERISA applies, 29 U.S.C. § 1144(d), which expressly subordinates ERISA to other federal statutes, subordinates the anti-alienation provision of ERISA (29 U.S.C. § 1056(d)(1)) to SIPA and the net equity definition therein.

3. Whether the Bankruptcy Court properly found that the net equity calculation for a transferee account that received transfers from a transferor account with multiple beneficiaries was fact specific and therefore outside the scope of the Motion.

COUNTERSTATEMENT OF FACTS

A. The SIPA Liquidation Proceeding

On December 11, 2008, the largest Ponzi scheme in history was revealed when federal agents arrested Madoff. *See In re Bernard L. Madoff Inv. Sec. LLC* 424 B.R. 122, 125-26 (Bankr. S.D.N.Y. 2010) (the "*Bankr. Net Equity Decision*"). The same day, the Securities & Exchange Commission ("SEC") filed a civil complaint against Madoff and BLMIS alleging that they were operating a Ponzi scheme through BLMIS's investment advisor business. *See Bankr. Net Equity Decision*, 424 B.R. at 124 n.3, 126.

On December 15, 2008, the SEC consented to a combination of the SEC action with an application of the Securities Investor Protection Corporation ("SIPC"), which SIPC filed, pursuant to section 78eee(a)(3) of SIPA. *Id*. at 126. Also on December 15, 2008, this Court entered a decree that BLMIS customers were in need of the protections of SIPA, appointed the Trustee for the liquidation of BLMIS, and removed the case to the Bankruptcy Court. *Id.* On April 13, 2009, certain parties filed an involuntary bankruptcy petition against Madoff in the Bankruptcy Court. An interim trustee was appointed on April 20, 2009 and on June 9, 2009, a consent order was entered substantively consolidating the Chapter 7 estate of Madoff with the estate of BLMIS. (AA 12-19.)

B. The Claims Procedure Order and the Claims Process

SIPA has a unique claims process that differs from traditional bankruptcies, reflected in specific provisions of SIPA and the claims procedures order entered by the Bankruptcy Court at the inception of the liquidation (the "Claims Procedures Order"). (T. App. 001-008.) Customers

were required to file claims with the Trustee by July 2, 2009, the statutory bar date. The Trustee would then issue a claim determination in writing. Thereafter, the Claims Procedures Order required claimants who disagreed with the Trustee's claim determination to file objections with the bankruptcy court setting forth the bases of their objection. *Id.* If claimants did not object to the Trustee's determination, the determination is binding upon the claimant. The Trustee received approximately 400 objections relating to the Trustee's methodology in calculating inter-account transfers. (AA 131-166.)

C. Customer Property and Net Equity Under SIPA

In general, a SIPA liquidation proceeding is conducted in accordance with the provisions of the Bankruptcy Code, but where these two statutory schemes are not consistent, SIPA governs. SIPA § 78fff(b). Unlike an ordinary bankruptcy case, a SIPA liquidation gives priority to payment of customer net equity claims from the customer property estate, as distinguished from claims of general creditors, which are paid from the general estate. *See In re Weis Sec., Inc.*, 73 Civ. 2332, 1976 WL 820, at *6 (S.D.N.Y. Aug. 2, 1976). Customers are entitled to share in customer property up to the amount of their "net equity," which is the amount the broker would have owed to the customer if the broker liquidated the customer's securities positions, plus the cash deposited by the customer to purchase securities. SIPA § 78*lll*(11).

Because a "customer" with a "net equity" claim has a priority status, claimants bear the burden of showing that they are entitled to such a priority. *See In re Bernard L. Madoff*, 515 B.R. 161, 166-67 (Bankr. S.D.N.Y. 2014). For these reasons, the traditional rules in bankruptcy regarding claims allowance and the relative burdens of proof are applicable here but only as to general creditors, not "customers." *See, e.g., In re MF Global Holdings Ltd.*, Nos. 11-15059 (MG), 11-02790 (MG), 2012 WL 5499847, at *3 (Bankr. S.D.N.Y. Nov. 13, 2012); 11 U.S.C. § 502(a). Net equity claims will only be paid "insofar as such obligations are ascertainable from

the books and records of the debtor or are otherwise established to the *satisfaction of the trustee*." SIPA § 78fff-2(b) (emphasis added).

D. The Net Investment Method Litigation

Although Madoff claimed to execute an investment strategy for his customers, in reality, he neither bought nor sold any securities on their behalf. Rather, he merely deposited customer money in a checking account, which he used to pay customer withdrawals. To perpetuate the Ponzi scheme, BLMIS fabricated customer statements and other documentation purporting to reflect account activity. These customer statements were based on historical trading data, calculated to reflect "an astonishing pattern of continuously profitable trades." *Net Equity Decision*, 654 F.3d at 232. Despite the fictions relating to securities trading reflected on the customer statements, the cash deposits and withdrawals on the statements were accurate. *See id.* ("the only accurate entries reflected the customers' cash deposits and withdrawals.").

Because no securities trading took place, the Trustee determined that each customer's net equity in this SIPA liquidation was the amount of cash deposited less amounts withdrawn by each customer, without regard to fictitious "profits" reflected on customer account statements (the "Net Investment Method"). The Trustee determined that the Net Investment Method was the only method consistent with SIPA, the Bankruptcy Code, and Ponzi case law. The Trustee rejected a method that calculates net equity based on amounts shown on the most recent account statement generated by BLMIS (the "Last Statement Method"). The Trustee concluded that the Last Statement Method would give undue credence to fictitious amounts engineered by Madoff, and that the Trustee should instead rely on a methodology that reflected reality. Application of the Net Investment Method results in customers falling within one of the two following categories:

(i) **Net Winners**: customers who withdrew more funds from BLMIS than they deposited. These customers received a full return of their principal, in addition to some amount of fictitious profits fabricated by Madoff. Those "profits" are, in fact, other customers' principal. The Trustee has filed adversary proceedings against certain Net Winners to avoid and recover these transfers of fictitious profits.

(ii) **Net Losers**: Customers who withdrew less funds from BLMIS than they deposited. These customers did not receive a full return of their principal invested with BLMIS. As such, they have a claim against the customer property estate for the difference between the cash they deposited and the amounts withdrawn.

In connection with the claims process outlined above, objections were filed challenging the Trustee's methodology for calculating net equity. Unsurprisingly, the Net Winners advocated the Last Statement Method, which would have enabled them to (i) keep amounts they withdrew in excess of their cash deposits, and (ii) establish a claim to the customer property fund for the balance reflected on their most recent customer account statement.

Following motion practice, briefing, and a hearing, the Bankruptcy Court upheld the Trustee's use of the Net Investment Method on March 1, 2010. *See Bankr. Net Equity Decision*, 424 B.R. 122. Rejecting claimants' arguments, the Bankruptcy Court explained:

> It would simply be absurd to credit the fraud and legitimize the phantom world created by Madoff when determining net equity. The Net Investment Method is appropriate because it relies solely on unmanipulated withdrawals and deposits and refuses to permit Madoff to arbitrarily decide who wins and who loses . . . . As such, the proper way to determine Net Equity is by adopting the Net Investment Method, which is the only approach that can appropriately serve as a proxy for imaginary securities positions shown on customers' last account statements.

Id. at 140 (citations omitted).

On a direct appeal, the Second Circuit affirmed the Bankruptcy Court, holding that "the Net Investment Method was more consistent with the statutory definition of "net equity" than any other method advocated by the parties or perceived by this Court. There was therefore no error." *Net Equity Decision*, 654 F.3d at 235. The Second Circuit agreed that "[u]se of the Last Statement Method in this case would have the absurd effect of treating fictitious and arbitrarily assigned paper profits as real and would give legal effect to Madoff's machinations." *Id.*

The Net Equity Decision did not address whether claimants were entitled to an inflationary or other time-based adjustment to the value of their claims. In a separate proceeding, the Bankruptcy Court agreed with the Trustee's determination that net equity claims did not include "time-based damages," such as interest or inflationary amounts to account for the time value of money. *See In re Bernard L. Madoff*, 496 B.R. 744 (Bankr. S.D.N.Y. 2013). On February 20, 2015, the Second Circuit affirmed the Bankruptcy Court's ruling on a direct appeal, explaining that "[u]nder SIPA, Claimants' net equity claims cannot be adjusted to reflect inflation." *In re Bernard L. Madoff Inv. Sec. LLC*, 779 F.3d 74, 81 (2d Cir. 2015) ("*Time-Based Damages Decision*).[4] The Second Circuit concluded that:

> The purpose of determining net equity under SIPA is to facilitate the proportional distribution of customer property actually held by the broker, not to restore to customers the value of the property that they originally invested. We thus previously concluded that in this case net equity could not be based on fictitious customer statements but instead should be determined based on customers' actual deposits and withdrawals. These deposits, net withdrawals, constitute customer property here. Under SIPA, Claimants' net equity claims cannot be adjusted to reflect inflation.

[4] As of the date of the filing of this brief, no petitions for *certiorari* have been filed, but one group of claimants, represented by Becker & Poliakoff, sought an extension of the time to file a petition for a writ of certiorari from May 21, 2015 to July 20, 2015. *See* Application (14A1099). This application was granted by Justice Ginsburg on April 28, 2015.

Id. at 81 (internal citation omitted). The Second Circuit also held that "the flexibility espoused" in its earlier ruling on net equity "has no relevance to this case." *Id.* at 79. Finding that its prior statement regarding a trustee's discretion to select a net equity methodology was "dicta," the Second Circuit held that SIPA's scheme precluded an inflation adjustment as a matter of law. *Id.* at 80.

E. Inter-Account Transfers

During his review of customer claims, the Trustee identified thousands of instances where transfers were made between two BLMIS accounts ("Inter-Account Transfers"), but no new funds entered or left BLMIS. These Inter-Account Transfers were reflected as book entries on the applicable customer statements. Because customer funds were commingled in a single checking account, no actual cash moved between any accounts.

To calculate net equity for accounts with Inter-Account Transfers, the Trustee calculated the actual amount of principal available in the transferor account at the time of the transfer, and credited the transferee account for the same amount (the "Inter-Account Method"). The Trustee ignored any fictitious gains. Thus, if the transferor account did not have any principal available at the time of the Inter-Account Transfer, the transferee account was credited with $0 for that transfer. Likewise, if, based on the net equity calculation, the transferor account had principal available at the time of the Inter-Account Transfer, the transferee account was credited with the amount of the Inter-Account Transfer, to the extent principal was available in the transferor account. As noted, over 400 claimants, including defendants in avoidance actions, objected to the Trustee's claims determinations, challenging the Trustee's treatment of Inter-Account Transfers. Most of these objections seek credit for the Inter-Account Transfer of fictitious amounts.

F. Antecedent Debt Decision Applies Net Equity to Inter-Account Transfers

The District Court was the first court in these proceedings to specifically consider the application of the Net Equity Decision to Inter-Account Transfers, in connection with avoidance actions commenced by the Trustee.

In accordance with his statutory duties to satisfy customer claims, *see* SIPA § 78fff-1(b), the Trustee filed hundreds of avoidance actions, seeking the return of funds that were withdrawn from BLMIS. On a motion to withdraw the reference by certain defendants (the "Antecedent Debt Defendants"), the District Court considered whether, under SIPA, a defendant in an avoidance action could assert the defense that value was provided for the payment by BLMIS of fictitious profits under section 548(c) of the Bankruptcy Code.[5] The Antecedent Debt Defendants argued that the Trustee could not avoid and recover transfers of fictitious profits because those payments were made in satisfaction of debts owed by BLMIS to those claimants pursuant to section 548(c) of the Bankruptcy Code, which debts arose by virtue of the liability for damages claims customers had against BLMIS stemming from the fraud Madoff committed.[6] They also challenged the Trustee's method for accounting for transfers between BLMIS accounts, because the methodology affected the value of the account that was the subject of the avoidance action.[7]

The District Court rejected the argument that claims for damages could constitute "value." *See Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Madoff Sec.)*,

[5] Section 548(c) provides a defense to the avoidance of transfers, in that "a transferee . . . of such a transfer . . . that takes for value and in good faith . . . may retain any interest transferred . . . to the extent that such transferee gave value to the debtor . . . ." 11 U.S.C. § 548(c).

[6] *See* Consolidated Memorandum of Law in Support of Motion to Dismiss Regarding Antecedent Debt Issues on Behalf of Withdrawal Defendants, as Ordered By The Court On May 12, 2012, 12-mc-115 (S.D.N.Y.), ECF No. 199, at 3. (T. App. 009-068.)

[7] *Id.* (T. App. 054-064.)

499 B.R. 416, 418 (S.D.N.Y. 2013) (the "*Antecedent Debt Decision*"). Judge Rakoff explained that "[t]o allow defendants, who have no net equity claims, to retain profits paid out of customer property on the ground that their withdrawals satisfied creditor claims under state law would conflict with the priority system established under SIPA by equating net equity and general creditor claims." *Id.* at 423 (quoting *Picard v. Greiff*, 476 B.R. 715, 727-28 (S.D.N.Y. 2012) (supplemented May 15, 2012)).

The District Court specifically rejected the Antecedent Debt Defendants' theory that inter-account transfers that included fictitious profits and inter-account transfers that occurred earlier than the two years preceding the Filing Date (the "Reach Back Period) should be treated as principal. *Id.* at 428. The Court reasoned that fictitious profits could not be transformed into principal through an inter-account transfer. *Id.* at 428-29. Rather, "no new value was created by moving these funds between different accounts." *Id.* at 429. In reaching this conclusion, the Court relied upon a decision in the Bayou Group bankruptcy, a case which also involved a Ponzi scheme. *Bayou Accredited Fund, LLC v. Redwood Growth Partners, L.P. (In re Bayou Group, LLC)*, 396 B.R. 810, *aff'd in part & rev'd in part*, 439 B.R. 284 (S.D.N.Y. 2010). In that case, investors in the Bayou Fund subsequently rolled over their investments in Bayou hedge funds. *Id.* at 884. The account statements for the transferor Bayou Fund accounts reflected fictitious profits which investors sought to retain, arguing that, in calculating their fraudulent transfer liability, the fictitious profits in the transferor account should be credited to the transferee hedge fund accounts. *Id.* The Bankruptcy Court disagreed, finding the hedge fund accounts to be inflated with fictitious profits. The Bankruptcy Court held: "in no event is it appropriate to pile fiction on fiction by deeming these investors' final Bayou Fund account statements, including fictitious profits, to be the value of their investments contributed to the Bayou hedge funds." *Id.*

at 885. The District Court affirmed on this issue. *Christian Bros. High Sch. Endowment v. Bayou No Leverage Fund, LLC (In re Bayou Group, LLC)*, 439 B.R. 284, 338-39 (S.D.N.Y. 2010).

In the Antecedent Debt Decision, the Court also explained that the timing of an inter-account transfer was of no moment, rejecting the Antecedent Debt Defendants' arguments that the inter-account transfer methodology wrongly exceeded the Reach-Back Period for the avoidance of transfers. Judge Rakoff reasoned: "[a]t heart, the substance of these transactions was merely to perpetuate a cycle of artificial profits and further investments; where there was no investment of new principal, even those pre-reach-back-period transfers establishing new accounts failed to provide any new value." *Antecedent Debt Decision*, 499 B.R. at 430.

Finally, Judge Rakoff also considered and rejected the argument that an inter-account transfer should be treated the same as a withdrawal of cash. He noted that "although defendants claim that such a transfer may be viewed as a transfer of the right to receive an unavoidable payment from Madoff Securities, that right does not exist as long as the fictitious profits remained with Madoff Securities . . . ." *Id.* at 429.

G. Litigation of the Inter-Account Transfer Issue Before the Bankruptcy Court

Given the large number of accounts impacted by the Inter-Account Transfer issue, an omnibus proceeding was commenced to address the legal issues on a consolidated basis. *See* Scheduling Order (T. App. 069-073.) As ordered by the Bankruptcy Court, "[t]he sole purpose of the Inter-Account Transfer Motion shall be to resolve the legal issue raised by objections to the methodology used to calculate the amount transferred between BLMIS accounts in connection with customer claims." *Id.*

Following briefing and a hearing, the Bankruptcy Court issued its Inter-Account Decision on December 8, 2014. Judge Bernstein held that "increasing [Claimants'] net equity claims by

giving them credit for the fictitious profits "transferred" into their accounts contravenes the *Net Equity Decision*." (AA 567). The Bankruptcy Court explained:

> [l]ike the Net Investment Method on which it is based [the Inter-Account Method] . . . ignores the imaginary, fictitious profits . . . and conserves the limited customer pool available to pay net equity claims on an equitable basis. . . . Crediting the Objecting Claimants with the fictitious profits . . . essentially applies the Last Statement Method to the transferors' accounts, and suffers from the same shortcomings noted in the *Net Equity Decision*. It turns Madoff's fiction into a fact.

(AA 570.)

The Bankruptcy Court found that the Inter-Account Method did not violate the two-year statute of limitations because "a customer can't transfer was he doesn't have." (AA 571.) Moreover, the Inter-Account Decision noted that claimants "received credit to their net equity claims based on deposits made into the transferor's account regardless of when they occurred, their net equity claims must be reduced by any withdrawals the transferor took no matter when he took them." (AA 572.) The Bankruptcy Court rejected arguments that the Inter-Account Method created arbitrary or unfair results observing that "[t]hose victims who did not receive fictitious profits or whose investments actually funded the excess withdrawals from the transferor accounts would, I suspect, view fairness differently." (AA 573.)

Judge Bernstein also disagreed with the notion that the transferor account could constitute an initial transferee of an avoidable transfer because "the Inter-Account Method is not concerned with avoiding transfers, and hence, the distinction between initial and subsequent transferees is irrelevant." (AA 574.) The Bankruptcy Court rejected the notion that the Trustee was improperly combining accounts in violation of SIPA, SIPC regulations, and SEC regulations. (AA 576) ("The objection is wrong.") Similarly, the Bankruptcy Court found that "the Inter-Account Method does not implicate New York's public policy regarding the finality of

transactions," recognizing that a similar argument was considered by and rejected by the Second Circuit in the Net Equity Decision. (AA 578.) The Bankruptcy Court recognized that, in a zero-sum game like the BLMIS Ponzi scheme, "recognizing the transfer of fictitious profits in the interest of finality would allow the Objecting Claimants to reap a windfall at the expense of the other victims of Madoff's fraud." (AA 579.)

With respect to the objection of Appellant Michael Most that the Inter-Account Method violates ERISA's anti-alienation provision (29 U.S.C. §1056(d)(1)), the Bankruptcy Court found that the express subordination provision of ERISA "trump[s] any affect ERISA might have on the net equity calculation." (AA 581.) Finally, the Bankruptcy Court identified certain issues as falling outside the scope of the Inter-Account Transfer proceedings, including the issues raised by Appellant Elliot Sagor. The crux of Sagor's argument was that accounts with multiple beneficiaries should have the net equity of each participant in that account calculated on an individualized basis. As Judge Bernstein recognized, "[t]his is another way of arguing that they should be treated as separate customers." (AA 585.) But "the question of whether someone is a SIPA customer is a factual one peculiar to the particular Objecting Claimant. . . . [and] is beyond the scope of the [Inter-Account Transfer Motion]." (AA 585.) The order granting the Inter-Account Transfer Motion was entered on December 22, 2014. (AA 602.)

Following entry of the order affirming the Trustee's inter-account transfer methodology, five appellants filed timely notices of appeal. These appeals followed.

ARGUMENT

I. THE TRUSTEE'S METHODOLOGY IS CONSISTENT WITH APPLICABLE LAW

A. The Inter-Account Method is Mandated by the Net Equity Decision

At bottom, this dispute represents yet another iteration of arguments that have been raised, considered, and rejected by the Bankruptcy Court, District Court, and Second Circuit several times. Appellants continue to seek credit for fictitious amounts. Although Appellants attempt to advance the argument that the Trustee has discretion in applying the Net Investment Method to serve their own purposes, the fact of the matter is that he does not. The core principle affirmed by court after court is that the Net Investment Method is the only way to ensure that real dollars are not used to pay claims for fictitious dollars. The Second Circuit agreed with the Bankruptcy Court's conclusion that the Net Investment Method was the best and most fair way to distribute a limited pool of funds to victims without favoring one group of customers over another. *Net Equity Decision*, 654 F.3d at 235. Quoting Judge Lifland, the Second Circuit reiterated "[a]ny dollar paid to reimburse fictitious profits is a dollar no longer available to pay claims for money actually invested. If the Last Statement Method were adopted, Net Winners would receive more favorable treatment by profiting from the principal investments of Net Losers, yielding an inequitable result." *Id.* (quoting *Bankr. Net Equity Decision*, 424 B.R. at 141.) Allowing the losses of net losers to subsidize net winners would essentially turn this SIPA liquidation into its own Ponzi scheme. Focusing on the economic reality, the Bankruptcy Court also noted:

> [e]quality is achieved in this case by employing the Trustee's method, which looks solely to deposits and withdrawals that in reality occurred. To the extent possible, principal will rightly be returned to Net Losers rather than unjustly rewarded to Net Winners under the guise of profits. In this way, the Net Investment Method brings the greatest number of investors closest to their

> positions prior to Madoff's scheme in an effort to make them whole.

Bankr. Net Equity Decision, 424 B.R. at 142.

Recently, the Second Circuit expounded on what it meant by the phrase in the Net Equity Decision, seized upon by Appellants, that "differing fact patterns will inevitably call for differing approaches to ascertaining the fairest method for approximating net equity." *See Time-Based Damages Decision*, 779 F.3d at 79 (quoting *Net Equity Decision*, 654 F.3d at 235). The Second Circuit explicitly rejected Appellants' argument that the Trustee has unfettered discretion when calculating customer claims. It explained, "[a]lthough we suggested, in dicta, that a SIPA trustee should 'exercise some discretion' in selecting a method to calculate 'net equity' and a reviewing court should accord a degree of deference to the method chosen, that standard is inapplicable here: [w]e conclude that SIPA's scheme disallows an inflation adjustment as a matter of law." *Time-Based Damages Decision*, 779 F.3d at 80.

Applying that principle to the Inter-Account Method is no different. The Second Circuit has clearly mandated that the Net Investment Method is the appropriate method to be followed in this case. There is nothing in the Net Equity Decision, nor the Bankruptcy Court Net Equity Decision to suggest that the Trustee can apply the Net Investment Method to certain transactions (*i.e.*, when it inures to the benefit of the Appellants), and to apply the Last Statement Method to others (*i.e.*, when the result is not as advantageous to the Appellants). As the Bankruptcy Court recognized, "[t]he only verifiable amounts that are manifest from the books and records are cash deposits and withdrawals." *See Bankr. Net Equity Decision*, 424 B.R. at 135. The Inter-Account Method simply carries forward that maxim to determine the net equity of accounts in which Inter-Account Transfers occurred.

Appellants describe the so-called "inequities" of the Inter-Account Method, providing examples of how the approach affects certain individual accounts. In fact, the particular inequities vary from customer to customer. Thus, while it may at first blush seem fair that a customer receive some "profits," that is only true as between the customer and BLMIS. Between customers, however, one customer should not be permitted to benefit from the fraud at the expense of other customers, even though she is innocent. *See, e.g.*, *Scholes v. Lehmann*, 56 F.3d 750, 757-58 (7th Cir. 1995) (investor should not be permitted to benefit from fraud at later investor's expense merely because he was not to blame for fraud); *see also Donnell v. Kowell*, 533 F.3d 762, 779 (9th Cir. 2008). Moreover, Appellants do not address the source for the money they contend will "make them whole." In a Ponzi scheme, it can only come from other customers. Appellants are asking this Court to award them fictitious paper profits by giving them another customer's principal. It begs the question: where is the equity in that?

The Inter-Account Method treats all customers equally, based on the principal they had in their accounts. Deviating from that method creates arbitrary calculations that apply unequally to the customer class. Thus, while it may be in the interests of certain individual customers to retain fictitious profits, any methodology that awards such profits is not in the interest of the customer class as a whole. *See, e.g.*, *Kusch v. Mishkin (In re Adler, Coleman Clearing Corp.)*, No. 95-08203 (JLG), 1998 WL 551972, at *17 (Bankr. S.D.N.Y. Aug. 24, 1998) (holding that "the trustee's duty to the SIPA estate as a whole clearly prevails over the interests of any single customer"), *aff'd*, 208 F.3d 202 (2d Cir. 2000).

The Inter-Account Method is the only method that comports with the settled principles set forth in the Net Equity Decision, and it will become readily apparent that all arguments to the

contrary are meager attempts by Appellants to convince this Court to ignore what is and remains good law in this case.

B. The Antecedent Debt Decision Remains Relevant Precedent

Though it is not surprising that Appellants seek to diminish the applicability of the Antecedent Debt Decision to these proceedings, the Bankruptcy Court's reliance thereon was entirely proper. Although the Antecedent Debt Decision considered an affirmative defense to an avoidance action, the precise question before the Court there is directly on point with the question presented on this appeal: what value should be ascribed to transfers between BLMIS accounts, where no funds entered or left BLMIS. In reaching its decision, the District Court relied on a prior decision that declined to give investors credit for fictitious profits in an analogous situation. *Antecedent Debt Decision*, 499 B.R. at 429 (citing *In re Bayou Group, LLC*, 439 B.R. at 338-39). Furthermore, the suggestion by Appellants and Amici that the Antecedent Debt Decision has been called into question is without merit. The ruling has not been appealed, much less overruled, and thus gives this Court no basis to reconsider that decision.

Amici suggest that the decision in *Picard v. Ida Fishman Revocable Trust (In re Bernard L. Madoff Inv. Sec. LLC)*, 773 F.3d 411 (2d Cir. 2014) (the "*546(e) Decision*")[8] somehow diminishes the Antecedent Debt Decision and requires application of the Last Statement Method to Inter-Account Transfers. Amicus Br. at 16. Putting aside the fact that such an application could never be reconciled with the Net Equity Decision, the 546(e) Decision did not address the "value" defense that Amici improperly put before this Court, nor did the 546(e) Decision

[8] The Second Circuit's opinion affirming Judge Rakoff's 546(e) opinion examined whether certain cash payments made by BLMIS to customers qualified for special treatment under the securities laws. By definition, a cash payment made to an account or customer outside of BLMIS is not an Inter-Account Transfer, where the funds in question never left BLMIS and were only evidenced by a book entry.

implicate or disturb the Net Equity Decision.[9] Indeed, Judge Rakoff issued the Antecedent Debt Decision subsequent to his own decision on section 546(e).

Furthermore, the Second Circuit's decision in *Picard v. Fairfield Greenwich Ltd.*, 762 F.3d 199 (2d Cir. 2014), has no relevance to these proceedings and in no way calls into question the Antecedent Debt Decision. In *Fairfield*, the Second Circuit concluded that the Trustee could not enjoin settlements of actions brought by investors in feeder funds. *Id.* at 208-14. The Antecedent Debt Decision, and the Net Equity Decision with which it comports, provides the authority relevant to determination of Appellants' net equity. Appellants' attempts to avoid the application of these decisions fail.

C. The Trustee's Methodology is Consistent with SIPA

Certain Appellants and Amici argue that treating transferor and transferee accounts separately to determine net equity cannot be reconciled with provisions of SIPA and SIPC's Series 100 Rules, which require a customer who holds accounts in separate capacities to be treated separately for purposes of a SIPA advance on a net equity claim. SIPA § 78fff-3(a)(2); 17 C.F.R. §§ 300.100-300.105; Joint Br. at 16-18; Amicus Br. at 17-19. As the Bankruptcy Court correctly found, the Trustee has not combined accounts; to the contrary, the net equity of each account is separately determined.

Section 78fff-3 of SIPA and the Series 100 Rules provide for SIPC advances for the benefit of customers up to statutory limits and allow for separate advances to customers with accounts held in separate "capacities," entitling each account to its own SIPC advance and net

[9] In fact, Amici agreed to the scope of the 546(e) appeal, which was limited to "deciding whether Section 546(e) of the Bankruptcy Code applies, limiting the Trustee's ability to avoid transfers." *See* Consent Order Granting Certification Pursuant to Fed. R. Civ. P. 54(b) (Case No. 12-MC-0115, ECF No. 109). (T. App. 076.)

equity claim. Where accounts are held in the same capacity, the accounts are combined and are given a single claim against the fund of customer property and a single SIPC advance.[10]

The Trustee calculated net equity for each account, calculating each account's running balance separately. Deposits and withdrawals that took place within a single account were only credited or debited from that account. Only in those instances where a transferor account had insufficient principal to complete an Inter-Account Transfer was the net equity calculation impacted at all. The fact that the Trustee followed transactions between accounts does not mean that he combined them in violation of SIPA or the Series 100 Rules because net equity for the transferee and transferor accounts were determined separately. Claims for accounts with a positive net equity claim were allowed, and those accounts with a negative net equity claim were denied. The fact that an inter-account transfer occurred between accounts does not "combine" them under the Series 100 Rules.

II. THE INTER-ACCOUNT METHOD DOES NOT IMPLICATE FRAUDULENT TRANSFER LAW

Appellants and Amici base several arguments on the faulty premise that the Trustee's treatment of Inter-Account Transfers somehow equates to an avoidance action. Joint Br. 11-15, 18-21; Most Br. at 11; Amicus Brief at 21-23. This inaccurate assumption leads to incorrect arguments that are relevant only to avoidance actions: the Trustee has violated the applicable limitations period and that the Trustee lacks standing. They also argue that the Inter-Account Method violates state laws favoring finality in business transactions. Joint Br. 11-15, 18-21;

[10] Examples of "separate" capacities are individual accounts, joint accounts, accounts for a trust under state law, an individual retirement account, an account held by an executor, and an account held by a guardian for a minor or ward. Thus, if a claimant has two individual accounts, those accounts will be combined, resulting in SIPC coverage of up to $500,000 and a single claim against the fund of customer property. If, however, a claimant has an individual account and an IRA account, those accounts are held in "separate" capacities and he will be entitled to SIPC protection of up to $500,000 for each account and to two claims against the fund of customer property. 17 C.F.R. § 300.100.

Most Br. at 11. Certain Appellants further suggest that the Trustee has somehow violated their due process rights, in relation to their statute of limitations and standing arguments. Joint Br. at 12-13. For the reasons explained below, each of these arguments was correctly rejected by the Bankruptcy Court.

An avoidance action seeks to nullify a transfer, *see Tronox Inc. v. Kerr-McGee Corp. (In re Tronox)*, 464 B.R. 606, 613 (Bankr. S.D.N.Y. 2013), whereas the Inter-Account Method "merely determines the value of what was transferred based on the net investment in the transferor's account." (AA 587.)[11] As the Bankruptcy Court properly recognized, the "Inter-Account Method is not concerned with avoiding transfers, and hence, the distinction between initial and subsequent transferees is irrelevant. Instead, it is intended to compute the claimant's net equity by stripping the fictitious profits from the calculation of the balance in the transferor's account." (AA 574.)

Amici take the defective "avoidance action" argument even further, positing that "the Trustee must avoid the initial transfer to the initial transferor, and then proceed under section 550 against the transferee account holder as subsequent transferee." Amicus Br. at 22 n.11. But bookkeeping entries on a customer statement are simply not any "mode . . . of disposing of or parting with . . . property or . . . an interest in property" by BLMIS that the Trustee could pursue under the applicable avoidance provisions. *See* 11 U.S.C. §§ 101(54), 548; *see also Antecedent Debt Decision*, 499 B.R. at 429. The fact of the matter is that the funds never left BLMIS. The Antecedent Debt Decision makes this point clear: "although defendants claim that such a transfer

[11] Judge Bernstein distinguished the term "transfer" as it is used in the Inter-Account Transfer context as opposed to in an avoidance action that seeks to avoid transfers under sections 544 or 548. (*See* AA 559) ("The terms 'transfer,' 'transferor,' and "'transferee' in this decision are used for convenience and are not intended to imply that a transfer took place between the transferor and transferee within the meaning of 11 U.S.C. § 101(54).").

may be viewed as a transfer of the right to receive an unavoidable payment from Madoff Securities, *that right does not exist as long as the fictitious profits remained with Madoff Securities*, and so the sender had no such right to transfer." *Antecedent Debt Decision*, 499 B.R. at 429 (emphasis added).

A. There Has Been No Due Process Deprivation

Without any basis to characterize the Inter-Account Method as the avoidance of a fraudulent transfer, Appellants' argument that the Trustee cannot exclude fictitious profits in Inter-Account Transfers occurring more than two years prior to the Filing Date fails.[12] *See* Joint Br. at 11; Most Br. at 11. It therefore follows that Appellants' argument that in so doing the Trustee violated Appellants' due process rights has no basis. Joint Br. at 12-13.

It is well-settled that as a general matter, and in this specific case, a trustee in a Ponzi scheme calculates claims over the life of the account. *See Picard v. Greiff*, 476 B.R. at 725 (adopting approach in *Donell v. Kowell*, 533 F.3d at 771-72 (9th Cir. 2008)). As Judge Rakoff noted, "amounts transferred by Madoff Securities to a given defendant at any time are netted against the amounts invested by that defendant in Madoff Securities at any time." *Id.* at 729.[13]

Furthermore, no due process violation exists where, as here, the Trustee is not a governmental actor. *Natale v. Town of Ridgefield*. 170 F. 3d 258, 259 (2d Cir. 1999) (only "a gross abuse of governmental authority" can "violate[] the substantive standards of the Due Process Clause"). By statute, SIPC is a nonprofit corporation, and "shall not be an agency or

[12] Appellants refer to both the two-year Reach Back Period under section 548(a)(1)(A) of the Bankruptcy Code and the two-year statute of limitations under section 546(a)(1)(A) in support of their contentions. B&P Br. at 11; Most Br. at 11. Because the Trustee has not commenced an avoidance action and because claims are calculated over the life of the account, this distinction is irrelevant for purposes of these appeals.

[13] Although the Trustee appealed the *Picard v. Greiff* decision, the issues appealed related to section 546(e) and do not impact these proceedings.

establishment of the United States Government." SIPA § 78ccc(a)(1)(A). The District Court appointed the Trustee in this case, which confers upon the Trustee only those rights provided by SIPA (and none of which grant any governmental authority). *See* Order of December 15, 2008, No. 08 Civ. 10791 (S.D.N.Y. Dec. 15, 2008); SIPA §§ 78eee(b)(3), 78fff-1. Claimants' passing reference to the Trustee, "who is a quasi-governmental figure," therefore is without merit and cannot serve as the basis for a due process violation.

Due process requires adequate notice and an opportunity to be heard. *See* U.S. Const. amend. V; *see, e.g.*, *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 48-49 (1993); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Diaz v. Paterson*, 547 F.3d 88, 95 (2d Cir. 2008); *Soberal-Perez v. Heckler*, 717 F.2d 36, 43 (2d Cir. 1983). Even if Appellants' Constitutional argument had merit, which it does not, Appellants and their counsel have been provided with notice and an opportunity to be heard at every stage of these proceedings.

B. The Change in Corporate Form of BLMIS Is Irrelevant to the Method for Calculating Inter-Account Transfers

Certain Appellants' assertions that the change in BLMIS's corporate form from a sole proprietorship to a limited liability company in 2001 affects the Trustee's standing to pursue an avoidance action—somehow precluding him from "disallowing" Inter-Account Transfers—are both irrelevant and incorrect. As the Bankruptcy Court correctly held, a change in corporate structure does not transform fictitious profits into principal. (AA 584.)

Bernard L. Madoff, the sole proprietorship later known as BLMIS, was operated as a registered broker-dealer from January 19, 1960 when the sole proprietorship was registered with

the SEC until the fraud was uncovered in December of 2008.[14] Bernard L. Madoff and later BLMIS was a member of SIPC since SIPC's formation in late 1970. SIPA § 78ccc(a)(2)(A) (all registered brokers or dealers are required to be SIPC members). Appellants' arguments that BLMIS did not make transfers prior to 2001 is thus factually incorrect. In addition, when BLMIS changed—in form only—from a sole proprietorship to a limited liability company in 2001, its "business" (including its assets and liabilities) remained the same, and the bank accounts into which customer property was deposited remained the same. Indeed, when the sole proprietorship was converted to a limited liability company, Madoff filed forms with the Financial Industry Regulatory Authority affirming that BLMIS was succeeding to the prior business of a currently registered broker-dealer. (T. App. 176-191.) In so doing, BLMIS stated that it was assuming all assets and liabilities related to the sole proprietorship's business and that the transfer would not result in any change of control. *Id*. Thus, there was no practical change in the operation or control of the broker-dealer.

It is not surprising that Appellants are unable to locate any case law in support of their argument that somehow a change in corporate form some seven years before the BLMIS estate was created and the Trustee was appointed could now operate to limit the extent of the Trustee's statutory authority to determine claims. To the contrary, the precise corporate form of BLMIS at any given time in its history is irrelevant under SIPA because BLMIS was a registered broker-dealer with the SEC and a member of SIPC in either form for many decades before the Filing Date.

[14] Declaration of Kevin H. Bell in Support of the Reply Memorandum of Law of the Securities Investor Protection Corporation in Support of the Trustee's Determinations Regarding Inter-Account Transfers, dated June 6, 2014 ("Bell Decl."), Exhibit A. (T. App. 175.)

Appellants' statement that "the Bankruptcy Court had no power to treat Madoff Customers as BLMIS Customers" is perplexing. Joint Br. at 14. Taking their argument to its logical conclusion would mean the Appellants could not benefit in the calculation of their net equity claims from any principal invested prior to the change to an LLC, which makes no sense. One can only conclude that Appellants are attempting to gain benefits from the earlier investments while avoiding the burden of earlier withdrawals. They cannot have it both ways.

Appellants next argue that because the chapter 7 trustee for the estate of Bernard L. Madoff retained the ability to pursue certain actions in appropriate circumstances, the Trustee lacks standing to pursue avoidance actions made by Madoff prior to 2001. Joint Br. at 15. Aside from the fact that questions of standing to bring avoidance actions are irrelevant, Appellants' contentions are incorrect. The order appointing the Trustee specifically provides that he is imbued with "all duties and powers of a trustee as prescribed in SIPA." (AA 7); *see also* SIPA § 78fff-1 (providing specific powers to a trustee in a case under title 11). It is indisputable that SIPA, in conjunction with the Bankruptcy Code, authorizes, and indeed requires, a trustee to determine the net equity claims of customers of BLMIS. *See, e.g.* SIPA § 78fff-2(b). The Appointment Order makes no distinction between the two corporate forms of BLMIS, nor should it have because there was no change in the operation or control of BLMIS.

The order substantively consolidating Madoff's chapter 7 bankruptcy estate and the BLMIS estate also fails to assist Appellants as it specifically provides:

> Pursuant to section §105(a) of the Bankruptcy Code, the Madoff estate is substantively consolidated into the BLMIS SIPA Proceeding and the BLMIS estate, and all assets and liabilities of the Madoff estate shall be deemed consolidated into the BLMIS SIPA Proceeding and the BLMIS estate, which shall be administered in accordance with SIPA and the Bankruptcy Code under the jurisdiction of this Court.

(AA 16.)

The Trustee is properly performing his duties as mandated by the Appointment Order, the Substantive Consolidation Order, and SIPA. The retention by the chapter 7 trustee of authority to pursue, for example, transfers made from Madoff's personal bank accounts unrelated to the BLMIS business accounts, does not change this fact.

Finally, Appellants' assertion that the Bankruptcy Court erred in relying upon the Net Equity Decision when deciding that BLMIS's corporate change did not affect the correct methodology for calculating claims is incorrect. The Bankruptcy Court did not suggest that the Second Circuit specifically considered the change from sole proprietorship to an LLC. To the contrary, the Bankruptcy Court merely observed that implicit in the Net Equity Decision was a determination that net equity claims should be calculated over the life of the BLMIS account. Creating an arbitrary cut-off in 2001 would be inconsistent with that decision.

C. New York Policy Governing Finality in Business Transactions is Not Relevant

Certain Appellants argue that the Trustee's treatment of Inter-Account Transfers violates New York public policy by upsetting commercial transactions that were made in good faith. *See* Joint Br. at 18-21. This policy argument is just another attempt to reargue their earlier statute of limitations argument. Nevertheless, reliance upon New York policy has already been rejected by both the Bankruptcy Court and the District Court. (AA 579) ("To the extent SIPA upsets the finality of a bookkeeping entry crediting fictitious profits, federal law trumps any state law or doctrine.") (citing *First Fed. Sav. & Loan Ass'n of Lincon v. Bevill, Bresler & Schulman, Inc. (In re Bevill, Bresler & Schulman, Inc.)*, 59 B.R. 353, 378 (D. N.J. 1986), *appeal dismissed*, 802 F.2d 445 (3d Cir. 1986)). Indeed, any state law inconsistent with SIPA must yield under the Supremacy Clause. *See* U.S. Const., art. VI, cl. 2; *In re Bevill, Bresler & Schulman, Inc.*, 59

B.R. at 378 (holding that any state law that is inconsistent with SIPA is preempted under the Supremacy Clause).[15]

Appellants rely on *Banque Worms, Walsh*, and *Simkin* to support their argument that New York's policy favoring finality in business transactions governs the Court's ruling on the Inter-Account Method. Joint Br. at 3, 19- 21.[16] But these cases do not help the Appellants here.

Importantly, none of these cases invoke SIPA, the Bankruptcy Code, or even fraudulent transfer law. The Bankruptcy Court has already explained why *Banque Worms* and *Walsh* are inapposite: "[t]he Inter-Account Method does not implicate New York's public policy regarding the finality of transactions, mistaken or otherwise, or domestic relations settlements." (AA 578.) *Banque Worms* involved a claim of restitution for erroneously wired funds, along with the corollary counterclaim for declaratory relief and turned on whether New York's "discharge for value" rule applied to the recipient of erroneously transferred funds, despite a showing of detrimental reliance. *Banque Worms*, 77 N.Y.2d at 366. The *Walsh* court was primarily concerned with the construction of a marital settlement, insofar as the wife received funds that were the fruits of her ex-husband's Ponzi scheme. *See Walsh*, 17 N.Y.3d at 168-70. These topics are far afield from this appeal and do not implicate any issues salient to Inter-Account

[15] Even if state law did apply, it is well-settled that a transferee can only receive funds to the extent of the tranferor's interest in those funds. *See Neshewat v. Salem*, 365 F.Supp, 2d 508, 524 (S.D.N.Y. 2005), *aff'd*, 194 F. App'x 24 (2d Cir. 2006), *citing Chicago Title Ins. Co. v. Eynard*, 84 Misc. 2d 605, 606, (1st Dept. 1975) (grantee received only such title as the grantor had in the property); *BNP Paribas Mortg. Corp. v. Bank of Am., N.A.,* No. 09-9783, 2013 WL 6484727 (S.D.N.Y. December 9, 2013) (assignee cannot stand in better position than assignor); *In re Goodchild,* 160 Misc. 738, 745 (N.Y. Sur. Ct. 1936) (individual may convey no better title to an item of property than that which he himself possesses). Because the Second Circuit has confirmed that customers cannot receive credit for fictitious profits when calculating net equity, a transferor does not have the right to transfer fictitious profits and the transferee does not have the right to receive fictitious profits. *See also Antecedent Debt Decision*, 499 B.R. at 428-29; *In re Bayou Group LLC*, 396 B.R. at 885.

[16] *Citing Banque Worms v. BankAmerica Int'l*, 928 F.2d 538 (2d Cir. 1991); *Banque Worms v. BankAmerica Int'l*, 77 N.Y.2d 362 (1991); *Commodities Future Trading Comm'n v. Walsh*, 17 N.Y. 3d 162 (2011); *Simkin v. Blank*, 19 N.Y.3d 46 (2012).

Transfers. Nor does *Simkin* add anything to the analysis. *Simkin* involved a claim for reformation of a settlement agreement between ex-spouses in connection with their divorce. *Simkin*, 19 N.Y.3d at 49-51. The settlement provided for equal division of marital assets, including a BLMIS account. *Id.* Despite Appellants' suggestion to the contrary, the holding of *Simkin* did not address any issues regarding "finality in business transactions," but rather focused on the sufficiency of allegations to support a claim for reformation based on mutual mistake. *Id.* at 52.[17]

Appellants' citations to irrelevant decisions cannot disguise the binding authorities that apply here. The Trustee is required to apply the Net Investment Method to Inter-Account Transfers under the Net Equity Decision and the Antecedent Debt Decision. Avoidance concepts are irrelevant.

III. THE INTER-ACCOUNT METHOD DOES NOT VIOLATE ERISA

Appellant Michael Most argues that the Inter-Account Method violates ERISA, arguing that (i) his interest in fictitious profits is protected by ERISA's anti-alienation statute; and (ii) ERISA's anti-alienation statute is not subordinated to SIPA. Most Br. at 12-14. Most misconceives and misapplies ERISA's anti-alienation and preemption statutes in at least three different respects.

First, Most misstates the purpose of ERISA's anti-alienation statute. The statute is intended to protect a plan participant's interest in a plan from that participant's creditors. It does

[17] These Appellants also repeatedly assert that the fact that taxes were paid by certain of the transferees on the fictitious amount of an Inter-Account Transfer should alter the Trustee's methodology. However, the District Court has already explicitly stated that any claims involving taxes paid on gains that never existed are general creditor claims that may be filed against the general estate, stating that "[e]very BLMIS investor did not receive their final BLMIS balance, and thus lost the time-value of their investment, as well as any taxes paid on gains that never existed." *In re Madoff*, 848 F.Supp.2d 469, 480-81 (S.D.N.Y. 2012), *aff'd* 740 F.3d 81 (2d Cir. 2014).

not protect the plan itself. Here, the Trustee calculated the net equity of the customer accountholder—the plan—using the Net Investment Method. *Sec. Investor Prot. Corp. v. Jacqueline Green Rollover Account*, No. 12-Civ-1039, 2012 WL 3042986, at *5 (S.D.N.Y. 2012) (ERISA plans are customers of BLMIS and plan participants do not own the assets held by their retirement plans). While the application of the Net Investment Method affected Most's account by reducing the amount of the Inter-Account Transfer he received, the net equity calculation was completed in the retirement plan's account prior to the distribution to Most. Indeed, the Second Circuit has specifically held that ERISA's anti-alienation rule will not prevent the pension accounts of participants from being diminished by prior transfers to others. *Milgram v. Orthopedic Assoc. Defined Contribution Pension Plan*, 666 F.3d 68,75 (2d Cir. 2011). Most's reliance upon *Guidry* and *Shumate* is misplaced because, in both of these cases, the issue was the protection of a plan participant from his creditors, not protecting a plan from its creditors. Most Br. at 13, 16-18 (citing *Guidry v. Sheet Metal Workers Nat. Pension Fund*, 493 U.S. 365 (1990); *Patterson v. Shumate*, 504 U.S. 753 (1992)).

Second, Most attempts to extend ERISA's reach past the point where it applies. ERISA protects a plan participant's interest in a plan from the participant's creditors only to the point at which the interest is distributed to the participant. At that point, the participant no longer has a plan interest; what he has—and then rolls over—is a cash distribution free and clear of the plan and ERISA's protections. *Kickham Hanley P.C. v. Kodak Retirement Income Plan*, 558 F.3d 204, 214-15 (2d Cir. 2009) (only undistributed funds can be the subject of an anti-alienation provision); *see also Estate of Kensinger v. URL Pharma, Inc.*, 674 F.3d 131, 136-37 (3d Cir. 2012) (once a plan benefit is distributed, ERISA's anti-alienation statute falls away); *Andochick v. Byrd*, 709 F.3d 296 (4th Cir. 2013) (same). Thus, as Judge Bernstein correctly held, once

funds were transferred to Most's IRA account they were no longer subject to ERISA's protections. (AA 580) (citing *In re Francisco*, 204 B.R. 799, 801 (Bankr. M.D. Fla. 1996)).

Third, even if one were to assume ERISA applied to the calculation of net equity, the Bankruptcy Court correctly concluded that because ERISA contains a specific subordination provision, SIPA trumps the anti-alienation provision of ERISA. *See* 29 U.S.C. § 1144(d) ("Nothing in this chapter shall be construed to alter, amend, modify, invalidate, impair or supersede any law of the United States . . . ."). In reaching its decision, the Bankruptcy Court appropriately turned to *Jacqueline Green* for guidance on ERISA issues. (AA 580.) In *Jacqueline Green*, after Judge Cote concluded that plan participants do not own the assets in their retirement plans, she referenced ERISA's subordination provision:

> Moreover, even if the plan asset regulation were to alter the Plan Claimant's property rights . . . nothing in ERISA is to 'alter, amend, modify, impair, or supersede any law of the United States. Thus, in order to prevail on this issue, the Plan Claimants would need to show that applying ERISA in the manner they propose would not impair the functioning of SIPA's scheme for distributing advances to customers of the debtor. This could prove challenging if, for example, the Plan Claimants' scheme would require that SIPC treat *both* the Plan Claimants and the Account-Holder Entities in which they invested as customers.

Jacqueline Green Rollover Account, 2012 WL 3042986, at *8 n.4 (emphasis in original).

In his effort to attack the Bankruptcy Court's holding on subordination, Most simply misapplies *Shumate*. In *Shumate*, a plan participant filed for bankruptcy; at issue was whether the participant's interest in an ERISA-regulated plan—an ERISA plan which was not itself in any sort of bankruptcy proceeding—was part of that individual participant's own bankruptcy estate, or whether that interest was excludable under Section 541(c)(2) of the Bankruptcy Code. *See Patterson v. Shumate*, 504 U.S. at 755. In that context, there was never a concern whether the Bankruptcy Code (or any other federal statute) could be viewed as somehow "impaired" by

ERISA. Here, the last time Most "touched" an ERISA-regulated plan was when he received his distributions. When Most created his own rollover IRA, from those proceeds, he certainly was not invoking ERISA because as noted above, ERISA does not apply. As in *Jacqueline Green*, subordination is appropriate here because BLMIS account holders are creditors in BLMIS's liquidation where the determination of claims in accordance with SIPA is of paramount importance. Accordingly, any ERISA analysis that could allow "ERISA-related" claimants to receive preferred treatment over other claimants would interfere with and risk "impairing" the operation of SIPA.[18]

Because there has been no alienation of ERISA-protected funds and because of the subordination clause in the statute itself, Most's arguments cannot succeed.

IV. FACT-BASED ISSUES WERE BEYOND THE SCOPE OF THE PROCEEDINGS BELOW AND NEED NOT BE DETERMINED BY THIS COURT AS NO FINAL RULING WAS ISSUED

Appellant Elliot Sagor argued in the Bankruptcy Court—and does so again in this appeal—that the Court should overlook the fact that a single BLMIS account into which multiple people, including Sagor, invested, did not contain sufficient principal at the time a transfer was made to Sagor's account and give him credit for the amounts he previously deposited in the multi-beneficiary account. Sagor argues that his status as a customer with respect to his

[18] Most's reliance on *Guidry* in an attempt to overcome the statutory subordination is equally misplaced. In *Guidry*, the issue was whether the pension fund, as judgment creditor, could impose a constructive trust upon the petitioner's pension benefits because his criminal acts included embezzlement of funds that harmed other beneficiaries of the plan. The Supreme Court refused to impose a constructive trust because the federal statute at issue would not have been disturbed by the Court's refusal to do so. *Guidry*, 493 U.S. at 375. That scenario is distinguishable from the dispute here, where the calculation of net equity under SIPA would undoubtedly be implicated. Even if ERISA did apply, nothing in the legislation or case law requires credit be given to the transferee account for transfers that were entirely comprised of fictitious profits.

individual account makes him a customer with respect to the multi-beneficiary account in which he had an interest before opening his own individual account. Sagor Br. at 27-29.[19]

As the Bankruptcy Court recognized, the issues Sagor raises are purely factual and exceed the scope of these proceedings. (T. App. 070.) ("[t]he sole purpose of the Inter-Account Transfer Motion shall be to resolve the legal issue raised by objections to the methodology used to calculate the amount transferred between BLMIS accounts in connection with customer claims.").

While the Bankruptcy Court observed that several decisions of the Second Circuit, this Court, and the Bankruptcy Court have addressed the issue of who is a customer under SIPA and denied customer status to those in Sagor's position, the Bankruptcy Court determined that it was a question for another day. (AA 585) ("Nevertheless, as these decisions highlight, the question of whether someone is a SIPA customer is a factual one peculiar to the particular Objecting Claimant. This issue is beyond the scope of the *Motion* . . . ."). Accordingly, the Bankruptcy Court made no findings, factual or otherwise, regarding Sagor's net equity determination from which Sagor could have appealed. There is thus nothing relevant to this appeal in the record for this Court to consider.

V. CERTAIN AMICUS ARGUMENTS ARE IMPROPER

The Trustee and SIPC consented in good faith to the filing of the Brief of Amicus Curaie with the expectation that the arguments would remain within the permissible scope of an amicus

[19] Sagor's argument appears to be that customer status can somehow be retroactive but that is not the case. Customer status under SIPA is determined on a transaction-by-transaction basis. *See Sec. Investor Prot. Corp. v. Stratton Oakmont, Inc.*, 229 B.R. 273, 277 (Bankr.S.D.N.Y.1999) ("[A]n investor can be a customer vis-à-vis certain transactions but not others"), aff'd sub nom., *Arford v. Miller (In re Stratton Oakmont, Inc.)*, 210 F.3d 420 (2d Cir.2000); *Stafford v. Giddens (In re New Times Sec. Servs.)*, 463 F.3d 125, 128 (2d Cir.2006) (finding a claimant must make a showing of customer status on a transactional basis); *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 454 B.R. 285 (Bankr. S.D.N.Y. 2011) (same).

brief. *See Auto. Club of N. Y., Inc. v. The Port Authority of N. Y. and N. J.*, 2011 WL 5865296, at *2 (S.D.N.Y. Nov. 22, 2011) ("The usual rationale for amicus curiae submissions is that they are of aid to the court and offer insights not available from the parties.") (citing *United States v. El-Gabrowny*, 844 F. Supp. 955, 957 n.1 (S.D.N.Y. 1994)). However, the subject matter of the Amicus Brief touches on several issues not raised below, and those issues should be ignored for the purposes of this appeal. *See Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2776 (2014) (declining to consider arguments raised by amici that were not raised below or advanced in that court by any party); *see Fed. Treasury Enter. Sojuzplodoimport v. SPI Spirits Ltd.*, 726 F.3d 62, 82 (2d Cir. 2013) (declining "to accord significant weight to [an] argument both because it was not raised below and because an amicus brief is 'not a method for injecting new issues into an appeal.' . . . at least in cases where the parties are competently represented by counsel.") (*quoting Universal City Studios, Inc. v. Corley*, 273 F.3d 429, 445 (2d Cir. 2001))).[20]

Amici first attempt to muddy the waters by arguing that the discharge of "obligations" to the transferee account is affected by the 546(e) Decision and is somehow relevant to the issues on appeal. Amicus Br. at 15-16. As explained above, the Inter-Account Method does not implicate the Trustee's avoidance powers. In any event, any claim Amici could have for obligations—if viable—would only be properly asserted against the general estate, not the fund of customer property at issue in this appeal. *Antecedent Debt Decision*, 499 B.R. at 424 ("[t]o

[20] This Court previously precluded a party who was a defendant to a different avoidance action by the Trustee, from participating as an amicus on the grounds that he was party to a separate adversary proceeding. *See Picard v. Greiff*, 797 F. Supp. 2d 451, 452 (S.D.N.Y. 2011) ("While there is certainly no requirement that amici be totally disinterested, the partiality of an amicus is a factor to consider in deciding whether to allow participation. Here, because Mr. Velvel is actually a party to another adversary proceeding brought by Irving Picard that is pending in the Bankruptcy Court, the Court concludes that Mr. Velvel could not provide the Court with neutral assistance in analyzing the issues before it, and thus denies his motion to appear as amicus curiae.") (internal citations and quotations omitted). Here, Amici are defendants in avoidance actions brought by the Trustee and are in no way disinterested.

the extent that payment of defendants' state and federal law claims would discharge an antecedent debt, that debt runs against Madoff Securities' general estate, not the customer property estate.")

Secondly, Amici invoke—yet again—arguments that the New York Uniform Commercial Code should inform how this Court interprets net equity and the Inter-Account Method. Amici argue that the Trustee must apply state law when determining each customer's net equity. Amicus Br. at 15 (citing *Butner v. United States*, 440 U.S. 48, 56-57 (1979)). Amici fail to mention, however, that "state law need not apply if 'some federal interest requires a different result.'" *See Picard v. Greiff*, 476 B.R. at 724 (quoting *Butner v. United* States, 440 U.S. at 48, 55). A trustee's calculation of net equity is governed by SIPA, a federal statute which defines net equity. And the Second Circuit has already held that "the last customer statements are not useful for ascertaining net equity." *Net Equity Decision*, 654 F.3d at 236. The Trustee, therefore, is bound to apply the principles mandated by the Second Circuit.

Moreover, *Greiff* explicitly rejected the same argument Amici raise here, noting that the Uniform Commercial Code does not provide an avenue to assert the "value" defense. *See Picard v. Greiff*, 476 B.R. at 724. Judge Rakoff concluded that "[u]nlike the situation under § 546(e), Congress here has created no 'safe harbor' to shelter receipts that might otherwise be subject to avoidance." *Id.* at 725.[21] In any event, the Court need not—and should not—make a ruling on these issues because the issues were not raised by Appellants.

Amici also misrepresent statements made by counsel for the Trustee at oral argument before the Bankruptcy Court. In an attempt to overcome the fact that the books and records of

[21] Additionally, Judge Rakoff noted "defendants have shown neither that they could have enforced their claims for profits against Madoff Securities, nor that their claims shared the same priority with those of other debtors." *Greiff*, 476 B.R. at 723 n.8.

BLMIS only accurately reflect cash deposits and withdrawals, Amici disingenuously assert that the Trustee conceded that Inter-Account Transfers are cash transfers by blatantly inserting the word "cash" into a citation to the hearing transcript. Amicus Br. at 10. The true context of that exchange between Trustee's counsel and the Bankruptcy Court clarified that the books and records reflect an Inter-Account Transfer, but the Trustee repeatedly asserted to the Court that no actual cash was transferred.[22] The Trustee maintains that Inter-Account Transfers are nothing more than a book entry in the BLMIS records, and the Inter-Account Method calculates these Inter-Account Transfers for purposes of net equity in accordance with the Net Equity Decision.

Finally, Amici ask this court for relief[23]—an action that is entirely improper for those whose purpose is merely to provide assistance to the Court, not to seek to advance their own interests that clearly exceed the scope of this appeal. *Auto. Club of N. Y., Inc. v. The Port Authority of N. Y. and N. J.*, 2011 WL 5865296, at *2. Amici will have their day in court in their own proceedings.

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[22] The actual exchange was as follows (Hr'g Transcript, 60:7-18):

THE COURT: But the transfer was of actual cash, right?

MS. VANDERWAL: We agree that the books and records of BLMIS indicate that a transfer occurs. And the fact of a transfer is indicated in the amounts --

THE COURT: Also the amount is indicated?

MS. VANDERWAL: Right, but the amount is not –it's fictitious. It's a created amount --

THE COURT: Well, the --

MS. VANDERWAL: -- based on fictitious securities' activities in the account that gave rise to an account balance that was not real.

[23] *See* Amicus Br. at 28-30 (asking this Court to limit its holding to the application of the Net Investment Method to calculations of net equity, so that issues of "value" as that term is interpreted pursuant to section 548(c) will be separately determined).

CONCLUSION

The Bankruptcy Court correctly held that, as a matter of law, the Net Investment Method approved by the Second Circuit applies to the calculation of Inter-Account Transfers between BLMIS accounts, such that credit is given only up to the amount of principal in the transferee account at the time of the transfer and no credit is given for fictitious profits when determining each customer's net equity. Based on the foregoing, the Trustee respectfully requests that this Court affirm the Inter-Account Decision.

Dated: New York, New York
May 27, 2015

Respectfully submitted,

BAKER & HOSTETLER LLP

By: /s/ David J. Sheehan

David J. Sheehan
dsheehan@bakerlaw.com
Seanna R. Brown
sbrown@bakerlaw.com
Amy E. Vanderwal
avanderwal@bakerlaw.com
Stacy A. Dasaro
sdasaro@bakerlaw.com

45 Rockefeller Plaza
14th Floor
New York, NY 10111
Telephone: 212.589.4200
Facsimile: 212.589.4201

Attorneys for Appellee

UNITED STATES DISTRICT 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 (SMB) SIPA LIQUIDATION (Substantively consolidated)
AARON BLECKER, et al., Appellants, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1236 (PAE)
DIANA MELTON TRUST, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1151 (PAE)

EDWARD A. ZRAICK, JR., et al., Appellants, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1195 (PAE)
ELLIOT G. SAGOR, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1263 (PAE)
MICHAEL C. MOST, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1223

APPENDIX ON BEHALF OF APPELLEE IRVING H. PICARD, TRUSTEE
VOLUME I OF VII (PAGES T. App. 001 - T. App. 073)

BAKER HOSTETLER LLP
David J. Sheehan
Seanna R. Brown
Amy E. Vanderwal
45 Rockefeller Plaza
14th Floor
New York, NY 10111
Telephone: 212.589.4200

Attorneys for Appellee

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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adversary Proceeding No. 08-01789-BRL

ORDER ON APPLICATION FOR AN ENTRY OF AN ORDER APPROVING FORM AND MANNER OF PUBLICATION AND MAILING OF NOTICES, SPECIFYING PROCEDURES FOR FILING, DETERMINATION, AND ADJUDICATION OF CLAIMS; AND PROVIDING OTHER RELIEF

An order having been entered on consent by the Honorable Louis L. Stanton, United States District Judge, on December 15. 2008 (the "Protective Order") (1) finding that the customers of Bernard L. Madoff Investment Securities LLC (the "Debtor") are in need of the protection afforded by the Securities Investor Protection Act, 15 U.S.C. §78aaa et seq. ("SIPA"), (2) appointing Irving H. Picard as Trustee (the "Trustee") and Baker & Hostetler LLP as counsel for the Trustee, and (3) removing the liquidation proceeding to this Court; and it appearing, as set forth in the Trustee's Application dated December 21, 2008 (the "Application"), that this Court is required by SIPA and the Bankruptcy Code to direct the giving of notice regarding, among other things, the commencement of this liquidation proceeding, the appointment of the Trustee and his counsel; the hearing on disinterestedness of the Trustee and his counsel; the meeting of creditors; and the Trustee having recommended procedures for

resolution of customer claims and distributions; and it appearing that notice of the Application has been given to the Securities Investor Protection Corporation ("SIPC") and that no other notice need be given; no adverse interest having been represented, and sufficient cause appearing therefor, it is:

ORDERED, that the Application is granted; and it is further

ORDERED, that the Notice, explanatory letters, claim forms, and instructions appearing as Exhibits A, B, C, D, E, F, G and H to the Application, or substantially in that form, be, and they hereby are, authorized and approved, and shall be mailed by the Trustee to all former customers, broker-dealers, and other creditors of the Debtor, in conformance with this Order and in substantially the form appearing in those Exhibits, on or before January 9, 2008; and it is further

ORDERED, that the Trustee shall have the authority, on the advice and consent of SIPC, to amend these forms without further order of this Court; and it is further

ORDERED, that under 15 U.S.C. §78fff-2(a)(1), the Trustee be, and he hereby is, authorized and directed to cause the notice annexed as Exhibit A to the Application (the "Notice") to be published once in *The New York Times*, all editions; *The Wall Street Journal*, all editions; *The Financial Times*, all editions; *USA Today*, all editions; *Jerusalem Post*, all editions; *Ye'diot Achronot*, all editions, on or before January 9, 2008; and it is further

ORDERED, that under 15 U.S.C. §78fff-2(a)(1), the Trustee be, and he hereby is, authorized and directed to mail (a) a copy of the Notice, explanatory information, and claim form to each person who, from the books and records of the Debtor, appears to have been a

customer of the Debtor with an open account during the twelve (12) month period prior to December 11, 2008, (b) a copy of the Notice, explanatory letter, and claim form to creditors other than customers, and (c) a copy of the Notice, explanatory letter and Series 300 Rules to broker-dealers, at the addresses of such customers, broker-dealers, and creditors as they appear on available books and records of the Debtor, and finding that such mailing complies with the Notice Provision; and it is further

ORDERED, that under 15 U.S.C. §78fff-2(a)(3), any claim of a customer for a net equity which is received by the Trustee after the expiration of sixty (60) days from the date of publication of the Notice need not be paid or satisfied in whole or in part out of customer property, and, to the extent such claim is satisfied from monies advanced by SIPC, it shall be satisfied in cash or securities (or both) as the Trustee may determine to be most economical to the estate; and it is further

ORDERED, that, pursuant to 15 U.S.C. §78fff-2(a)(2), all claims against the Debtor shall be filed with the Trustee; and it is further

ORDERED, that all claims against the Debtor shall be deemed properly filed only when received by the Trustee at Irving H. Picard, Esq., Trustee for Bernard L. Madoff Investment Securities LLC, Claims Processing Center, 2100 McKinney Ave., Suite 800, Dallas, TX 75201; and it is further

ORDERED, that February 4, 2009, at 10:00 a.m., at Courtroom 601 of the United States Bankruptcy Court, One Bowling Green, New York, New York, is fixed as the time and place for a hearing on the disinterestedness of the Trustee and his counsel, as required by 15 U.S.C. §78eee(b)(6)(B); and it is further

ORDERED, that objections, if any, to the appointment and retention of the Trustee or his counsel shall be in the form prescribed by the Federal Rules of Civil Procedure and shall be filed with the Court, preferably electronically (with a courtesy hard copy for Chambers) and a hard copy personally served upon Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, NY 10111, Attention: David J. Sheehan, Esq. and Douglas E. Spelfogel, Esq., and the Securities Investor Protection Corporation, 805 Fifteenth Street, N.W., Suite 800, Washington, D.C. 20005-2215, Attention: Kevin Bell, on or before 12:00 noon on January 30, 2009; and it is further

ORDERED, that (a) the meeting of creditors required by Section 341(a) of the Bankruptcy Code, 11 U.S.C. §341(a), shall be held on February 20, 2009, at 10:00 a.m., at the Auditorium at the United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004 and (b) the Trustee shall preside at such meeting of creditors for the purpose of examining the Debtor and any of its officers, directors or stockholders and conducting such other business as may properly come before such meeting; and it is further

ORDERED, that the Debtor, by any of its officers, directors, employees, agents or attorneys, shall comply with SIPA and the pertinent sections of the Bankruptcy Code, including, without limiting the generality of the foregoing, (a) by designating a person to appear and submit to examination under oath at the meeting of creditors under Section 341(a) of the Bankruptcy Code, and (b) by complying with the Debtor's duties under Section 521 of the Bankruptcy Code, 11 U.S.C. §521, i.e., (i) by timely filing the schedules of assets and liabilities, of executory contacts, of pending litigations and information about any other pertinent matters; (ii) timely filing a list of creditors, a schedule of assets and liabilities and a statement of financial

affairs, (iii) cooperating with the Trustee as necessary to enable the Trustee to perform his duties; and (iv) surrendering forthwith to the Trustee all property of the Debtor's estate and any and all recorded information, including, but not limited to, books, documents, records, papers and computer; and it is further

ORDERED, that the Trustee be, and he hereby is, authorized to satisfy, within the limits provided by SIPA, those portions of any and all customer claims and accounts which agree with the Debtor's books and records, or are otherwise established to the satisfaction of the Trustee pursuant to 15 U.S.C. §78fff-2(b), provided that the Trustee believes that no reason exists for not satisfying such claims and accounts; and it is further

ORDERED, that the Trustee be, and he hereby is, authorized to satisfy such customer claims and accounts (i) by delivering to a customer entitled thereto "customer name securities," as defined in 15 U.S.C. §78*lll*(3); (ii) by satisfying a customer's "net equity" claim, as defined in 15 U.S.C. §78*lll*(11), by distributing on a ratable basis securities of the same class or series of an issue on hand *as* "customer property," as defined in 15 U.S.C. §78*lll*(4), and, if necessary, by distributing cash from such customer property or cash advanced by SIPC, or purchasing securities for customers as set forth in 15 U.S.C. §78fff-2(d) within the limits set forth in 15 U.S.C. §78fff-3(a); and/or (iii) by completing contractual commitments where required pursuant to 15 U.S.C. §78fff-2(e) and SIPC's Series 300 Rules, 17 C.F.R. §300.300 et seq., promulgated pursuant thereto; and it is further

ORDERED, that with respect to claims for "net equity," as defined in 15 U.S.C. § 78*lll*(11), the Trustee be, and he hereby is, authorized to satisfy claims out of funds made available to the Trustee by SIPC notwithstanding the fact that there has not been any showing or

determination that there are sufficient funds of the Debtor available to satisfy such claims; and it is further

ORDERED, that with respect to claims relating to, or net equities based upon, securities of a class and series of an issuer which are ascertainable from the books and records of the Debtor or are otherwise established to the satisfaction of the Trustee, the Trustee be, and he hereby is, authorized to deliver securities of such class and series if and to the extent available to satisfy such claims in whole or in part, with partial deliveries to be made pro rata to the greatest extent considered practicable by the Trustee; and it is further

ORDERED, that with respect to any customer claim in which there is disagreement between such claimant and the Trustee with regard to satisfaction of a claim, the Trustee be, and he hereby is, authorized to enter into a settlement with such claimant with the approval of SIPC, and without further order of the Court, provided that any obligations incurred by the Debtor estate under the settlement are ascertainable from the books and records of the Debtor or are otherwise established to the satisfaction of the Trustee; and it is further

ORDERED, that with respect to customer claims which disagree with the Debtor's books and records and which are not resolved by settlement, the following procedures shall apply to resolve such controverted claims:

A. The Trustee shall notify such claimant by mail of his determination that the claim is disallowed, in whole or in part, and the reason therefor, in a written form substantially conforming to Exhibit G to the Application.

B. If the claimant desires to oppose the determination, the claimant shall be required to file with this Court, preferably electronically, and a hard copy with

the Trustee a written statement setting forth in detail the basis for the opposition, together with copies of any documents in support of such opposition, within thirty (30) days of the date on which the Trustee mails his determination to the claimant. If the claimant fails to file an opposition as hereinabove required, the Trustee's determination shall be deemed approved by the Court and binding on the claimant.

C. Following receipt by the Trustee of an opposition by a claimant, the Trustee shall obtain a date and time for a hearing before this Court on the controverted claim and shall notify the claimant in writing of the date, time, and place of such hearing.

D. If a claimant or his counsel fails to appear at the hearing on the controverted claim, then the Trustee's determination may be deemed confirmed by this Court and binding on the claimant.

ORDERED, that the bar date for all claims is six (6) months from the date of publication of Notice and mailing that complies with the Notice Provisions ("Publication Date"), and the bar date for receiving the maximum possible protection for customer claims under SIPA is sixty (60) days from the Publication Date; and it is further

ORDERED, that under 15 U.S.C. §78fff-1(c) the Trustee shall file a progress report with this Court within six (6) months after publication of the Notice of Commencement, and shall file interim reports every six (6) months thereafter; and it is further

ORDERED, that the requirement of Local Bankruptcy Rule 9013-1(b) regarding the filing of a separate memorandum of law is waived.

Dated: December 23, 2008
New York, New York

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	12-MC-0115 (JSR)
In re: MADOFF SECURITIES	

CONSOLIDATED MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS REGARDING ANTECEDENT DEBT ISSUES ON BEHALF OF WITHDRAWAL DEFENDANTS, AS ORDERED BY THE COURT ON MAY 12, 2012

Filed by

Richard A. Kirby
K&L GATES LLP
1601 K Street
Washington D.C. 20006
(202) 778-9000 (Telephone)
(202) 778-9100 (Facsimile)

on behalf of all counsel listed below

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STATE STATUTES

OTHER AUTHORITIES

Defendants, whose motions to withdraw the reference and joinders therein were granted by the Antecedent Debt Order,[1] respectfully submit this memorandum of law in support of their consolidated motion to dismiss the Complaints filed against them by Irving H. Picard, the trustee (the "Trustee") appointed under the Securities Investor Protection Act ("SIPA"), 15 U.S.C. § 78aaa, *et seq.*, for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("Madoff Securities"), substantively consolidated with the estate of Bernard L. Madoff ("Madoff"), to recover allegedly fraudulent transfers (the "Avoidance Actions").

INTRODUCTORY NOTE

This brief is structured to comply with the Court's instruction that the parties not repeat arguments made and decided in *Picard v. Greiff*, -- F.Supp.2d --, 2012 WL 1505349 (S.D.N.Y. Apr. 30, 2012, Supplementing Opinion May 15, 2012) ("*Greiff*"). Accordingly,

- Section I addresses antecedent debt issues based on SIPA and Bankruptcy Code provisions not previously presented to the Court.
- Section II presents issues believed to be of first impression – *i.e.*, the treatment of new deposits and inter-account transfers – that were not briefed by the parties in *Greiff*.
- Section III incorporates by reference arguments previously made to this Court, to preserve such issues for appellate review.

[1] This consolidated brief is submitted, or deemed submitted, on behalf of all Defendants who are parties to the Antecedent Debt Order and addresses issues contemplated thereby. *See* Order, *In re Madoff Secs.*, No. 12-mc-0115 (S.D.N.Y. May 16, 2012), ECF No. 107 (the "Antecedent Debt Order"). A copy of the Antecedent Debt Order is filed herewith as Exhibit A to the Declaration of Richard A. Kirby in Support of Consolidated Motion to Dismiss ("Kirby Decl."). Not all Defendants are similarly situated and therefore they join in only those arguments applicable to them. As provided in paragraph 12 of the Antecedent Debt Order, nothing in this consolidated brief waives, limits, or impairs any argument, issue, or defense that has not been raised herein, specifically including any defense a defendant could raise in a motion under Fed. R. Civ. P. 12.

SUMMARY OF THE ARGUMENT

The law of this case limits the Trustee's Avoidance Actions to those permitted by Section 548(a)(1)(A) of the Bankruptcy Code. Section 548(c) provides an affirmative defense to the avoidance of fraudulent transfers where, as here, defendants took such transfers for "value and in good faith."[2] Value includes satisfaction of an antecedent debt, such as liability on claims. 11 U.S.C. § 548(d)(2)(A).

Although this Court decided in *Greiff* that "value" should be limited to only principal invested, statutory and decisional law not raised in *Greiff* show that value under substantive federal and state law should not be so limited. Specifically, Section 28(a)(2) of the Securities Exchange Act of 1934 (the "1934 Act"), of which SIPA is a part, expressly preserves all of Defendants' rights and remedies – including federal and state claims for rescission and damages arising from the massive fraud that the Trustee admits was perpetrated on Madoff Securities customers. These include claims for interest, consequential damages, and lost opportunity costs, all of which constitute recognized antecedent debts and hence value. Section 548(c) of the Bankruptcy Code permits Defendants to retain these additional amounts from their withdrawals from Madoff Securities. That these additional claims constitute value is supported by strong public policy considerations and is fully consistent with the Second Circuit's Net Equity decision. *See* Section I.A.

Whatever power the Trustee has to avoid obligations incurred by Madoff Securities is limited by the statutory reach-back period. Absent avoidance, each Defendant has the right to

[2] Because the Trustee concedes that the vast majority of Madoff Securities customers – including most Defendants – acted in good faith, this brief treats all Defendants as presumptively good faith transferees. *E.g.* Ex. C. to the Kirby Decl. (Amended Complaint, *Picard v. Estate of Doris M. Pearlman* (*In re Madoff*), No. 10-ap-04504, (Bankr. S.D.N.Y. Jan. 30, 2012), ECF No. 18 ("Amended Complaint Example")) (failing to allege any bad faith conduct by defendant).

credit against payments received any obligations of Madoff Securities incurred before the reach-back period as part of his or her Section 548(c) defense. The Trustee's position improperly reads out of the Bankruptcy Code the avoidance-of-obligations provisions of Section 548(a)(1) and the reach-back period found in that statute. *See* Section I.B.

An issue of first impression is a Defendant's entitlement to credit for new deposits made with Madoff Securities during the two-year reach-back period. As properly held by this Court, the Trustee cannot pursue transfers made earlier than the two-year reach-back period. Yet, the Trustee urges a computational method that would permit him to circumvent this statutory limitation and to indirectly avoid and recover time-barred transfers by applying deposits during the reach-back period against those old transfers. The Trustee's proposed method has no doctrinal or legal support, produces unfair and absurd results, and should be rejected. Instead, new deposits during the reach-back period should be applied as a credit against potentially avoidable transfers during the reach-back period. This approach produces fair, logical results that are fully consistent with the Court's ruling on the statutory reach-back period and is supported by analogous statutory and decisional law. *See* Section II.A.

A second issue of first impression is the appropriate treatment of inter-account transfers made from one customer to another outside the reach-back period. Just as transfers outside the reach-back period are not subject to avoidance, inter-account transfers from one customer to another may not be avoided if made outside the reach-back period. Consequently, such inter-account transfers should be treated the same as deposits of principal in the recipient's account, and withdrawals by such customer up to the amount of those inter-account transfers should be deemed "for value" (*i.e.*, payment of an antecedent debt). *See* Section II.B.

Defendants ask the Court to dismiss in whole or in part the Trustee's Avoidance Actions because each of the foregoing claims, as well as those set forth in Section III, limit or bar the Trustee's avoidance powers.

ARGUMENT

I. Provisions of SIPA and the Bankruptcy Code, Not Previously Addressed by the Court, Preserve Antecedent Debts that Defendants May Assert as Value Under Section 548(c).

A. Established federal and state law remedies allow each Defendant to retain amounts above original principal deposits under Section 548(c), and SIPA expressly incorporates rather than displaces these remedies.

Greiff limits the Avoidance Actions to intentional fraudulent transfers under Section 548(a). *Greiff*, 2012 WL 1505349, at *2. Under Section 548(c), Defendants can retain such transfers where they were taken for "value." 11 U.S.C. § 548(c). Section 548(d)(2)(A) defines "value" as "satisfaction" of a "present or antecedent debt of the debtor." 11 U.S.C. § 548(d)(2)(A). Debt is defined as "liability on a claim," and claim is a "right to payment." *See* 11 U.S.C. §§ 101(5)(A), (12).

While *Greiff* analyzed the Section 548(c) defense, material issues concerning that defense were not fully presented to the Court, which warrant consideration:

- SIPA was enacted as part of the 1934 Act, which contains an express savings clause and "Rule of Construction" in Section 28(a)(2) that preserves all rights and remedies at law and equity.

- Defendants have federal and state claims for interest in addition to their original principal investment. The 1934 Act contains an express statutory remedy of rescission in Section 29(b) as well as the implied rescission remedies available under Rule 10b-5, both of which require payment of interest in addition to principal. SIPA cannot fairly be read to displace those federal claims, since they are in the very statute of which SIPA was made a part. Likewise, Defendants' state law claims for interest in addition to principal are respected by SIPA's incorporation of Section 28(a).

- These same principles apply to Defendants' other federal and state remedies, including claims for lost opportunity costs in addition to principal.

- Congress gave SIPA trustees identical avoidance powers against transfers as those afforded to bankruptcy trustees, and the Bankruptcy Code's statutory limitations on those powers apply equally to a SIPA trustee.

- Regardless of whether a general Ponzi scheme exception to Section 548(c) exists, such an exception has no application to Defendants, as they were not equity investors in the Madoff Securities business, but deposited their funds as brokerage customers in a regulated business for the purchase and sale of securities.

The Court should rule that substantive non-bankruptcy claims are "value" even where they allow Defendants to retain more than a customer's principal deposits. In addition to the plain language of the statutes at issue, Defendants' position is supported by strong public policy considerations and is entirely consistent with the Second Circuit's Net Equity decision.[3]

1. SIPA expressly preserves federal and state law claims.

SIPA preserves federal and state law rights and remedies available in a bankruptcy proceeding. SIPA expressly incorporates the provisions of the 1934 Act: "[e]xcept as otherwise provided in this chapter, the provisions of the Securities Exchange Act of 1934 apply as if this chapter constituted an amendment to, and was included as a section of such Act." 15 U.S.C. § 78bbb. Section 28(a)(2) of the 1934 Act contains a "Rule of Construction" that explicitly preserves state law rights and remedies. *See* 15 U.S.C. § 78bb(a)(2) ("The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity."). Congress reaffirmed these principles by recodifying them in the Dodd-Frank legislation. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, §§ 767, 774, 124 Stat. 1799, 1802 (2010).

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[3] These substantive rights and remedies constitute "value" for Section 548(c) purposes and are distinct from the question – not before this Court – of whether the calculation of a customer's net equity claim should be adjusted to account for inflation, sometimes referred to as the "Constant Dollar" issue. *See In re Bernard L. Madoff Inv. Secs. LLC*, 654 F.3d 229, 235 n.6 (2d Cir. 2011) ("We express no view on whether the Net Investment Method should be adjusted to account for inflation or interest . . ..") (the "Net Equity decision").

In enacting Section 28(a), "Congress plainly contemplated the possibility of dual litigation in state and federal courts relating to securities transactions." *Matsushita Elec. Indus. Co., Ltd. v. Epstein*, 516 U.S. 367, 383 (1996). Likewise, the Second Circuit recognizes that the 1934 Act preserves all state law claims: "in enacting the Securities Acts, Congress was aware of the long-established state securities acts and the well-developed common law of fraud. Consequently, Congress carefully preserved all existing remedies at law or in equity." *Murphy v. Gallagher*, 761 F.2d 878, 885 (2d Cir. 1985). The Trustee's position that SIPA displaces customer remedies beyond return of principal cannot be squared with the statute. To the contrary, SIPA should be construed to preserve these remedies to the maximum extent.

2. Defendants have federal and state law rights to retain interest in addition to principal under Section 548(c).

This Court has recognized, and the Trustee has conceded, that a customer's principal is within the scope of value contemplated by Section 548(c). Indeed, it is indisputable that every Madoff Securities customer had a right to rescission and to return of principal based on the admissions by the Trustee and Bernard Madoff of widespread fraud.[4] But value under Section 548(c) is not limited to the customer's principal. To the contrary, the customer's rescission rights include interest, which falls squarely within the definition of value under Section 548(c).

Each customer undeniably had a federal securities claim against Madoff Securities from the inception of the relationship, as the relationship itself was procured by fraud. The Trustee admits that Madoff Securities received payments in connection with the purchase and sale of securities but did not purchase any securities, instead sending brokerage statements to its customers that contained lies. These admissions establish that each customer had a Rule 10b-5

[4] Nothing herein waives any Defendant's right to dispute the actual scope and dimension of the fraud.

claim from the time of the original deposit of funds with the broker.[5] In this context, it is irrelevant whether the false representations related to the securities ostensibly to be purchased[6] or instead concerned the fraudulent investment contracts entered into with each Madoff Securities customer regarding the investment advisory services to be provided.[7] Thus, each customer had a federal claim to address these admitted violations of Rule 10b-5. The remedies for securities fraud, and therefore the value of such a claim, include rescission of the transaction, recovery of principal, *and* compensation for the loss of the time value of money, expressed here as an award of interest.[8]

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[5] "[A] broker who accepts payment for securities that he never intends to deliver . . . violates § 10(b) and Rule 10b-5." *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 85 n.10 (2006); *SEC v. Zandford*, 535 U.S. 813, 819 (2002) (same); *see also Grippo v. Perazzo*, 357 F.3d 1218, 1220-24 (11th Cir. 2004) ("A plaintiff does not need to identify a specific security, or demonstrate that his money was actually invested in a security" to be afforded the protection of Rule 10b-5.).

[6] The defrauded customer has a federal claim for securities fraud whether or not a broker actually purchases the contemplated securities, in part because the customer has no means to confirm a transaction other than the account statement that the broker issues. *Schnorr v. Schubert*, 2005 WL 2019878, at *5 (W.D. Okla. Aug. 18, 2005) ("[*U*]*nfulfilled* promises to purchase securities qualify as *actual* purchases" for purposes of Rule 10b-5.); *see also Ormond v. Anthem, Inc.*, 2008 WL 906157, at *13 (S.D. Ind. Mar. 31, 2008) (Rule 10b-5 protects plaintiff who "thought they had purchased or sold a security.").

[7] An "investment contract" is any "contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise." *SEC v. Howey*, 328 U.S. 293, 298-99 (1946). "Congress' purpose in enacting the securities laws was to regulate *investments,* in whatever form they are made and by whatever name they are called." *Reves v. Ernst & Young*, 494 U.S. 56, 61 (1990). Congress enacted a broad definition of "security," sufficient "to encompass virtually any instrument that might be sold as an investment." *Id*; *SEC v Edwards*, 540 U.S. 389, 393-94 (2004); *Greiff*, 2012 WL 1505349, at *4 (Madoff Securities customer agreements were "securities contracts").

[8] *See, e.g., Rolf v. Blyth, Eastman Dillon & Co., Inc.,* 637 F.2d 77, 87 (2d Cir. 1980) ("In view of the high inflation rates that beset this period [during which the defendant exercised control over the defrauded plaintiff's investment], a damage award without prejudgment interest (or, indeed, even one that does include it) would not give [Plaintiff] full compensation for the losses he suffered at the hands of his fiduciary.").

The Securities Act of 1933 ("1933 Act") provides an express remedy for rescission in the case of misrepresentations in connection with the sale of securities. 15 U.S.C. § 77l(a)(2). Section 12(a)(2) of the 1933 Act provides that the victim may recover from the person who sold the security the "consideration paid for such security with interest thereon, less the amount of any income received thereon. . . ."[9] 15 U.S.C. § 77l(a)(2). In *Randall v. Loftsgaarden*, the Supreme Court found that the rescission remedy for Rule 10b-5 cases should be construed consistently with the express remedy in the 1933 Act. 478 U.S. 647, 662-63 (1986). Thus, not only is the rescission remedy well-settled for a violation of Rule 10b-5, but the inclusion of interest within its contours is fixed by the 1933 Act's express remedies.[10]

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[9] The meaning of this provision is well-established. In adopting the rescission remedy in Section 12(a)(2), Congress borrowed from the existing common law, which recognized the right to interest in addition to return of principal as a remedy for rescission. *See Schott v. Maidsville Coal Min. P'ship*, 1979 WL 1245, at *4 (S.D.N.Y. Sept. 7, 1979) (finding that plaintiff is entitled to the purchase price of the securities, less any distributions made, plus interest on his § 12(a)(2) claim); RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 53(4) (2010) ("Liability in restitution based on the payment or receipt of money normally includes prejudgment interest (a) from the date of payment to a conscious wrongdoer, a defaulting fiduciary, or a recipient otherwise at fault in the transaction concerned."); *see also* RESTATEMENT (SECOND) OF CONTRACTS § 354(1) (1981) ("If the breach consists of a failure to pay a definite sum in money or to render a performance with fixed or ascertainable monetary value, interest is recoverable from the time for performance on the amount due less all deductions to which the party in breach is entitled."). An interest award is necessary because the law recognizes a time value of money loss that must be compensated to make the victim of fraud whole. *Id.*

[10] *See, e.g., Bass v. Janney Montgomery Scott, Inc.*, 152 F. App'x 456, 458 (6th Cir. 2005) (rescission in Rule 10b-5 case includes return of consideration paid with interest thereon); *Ambassador Hotel Co., Ltd. v. Wei-Chuan Inv.*, 189 F.3d 1017, 1031 (9th Cir. 1999) (true rescission in a Rule 10b-5 case involves the return of consideration furnished plus interest); *see also Brick v. Dominion Mortg. & Realty Trust*, 442 F. Supp. 283, 303-04 (W.D.N.Y. 1977) (New Jersey blue sky statute providing for recovery of consideration paid for a security plus 6% interest effectively provides same recovery as Rule 10b-5); *see also Westinghouse Elec. Corp. v. '21' Intern. Holdings, Inc.*, 821 F. Supp. 212, 220 (S.D.N.Y. 1993) ("the legal standards to be applied in determining whether an injured party is entitled to rescission for violation of Rule 10b-5 and §§ 12(a)(2) and 17 are essentially the same as the standards developed in the common law fraud cases.") (internal cites omitted).

As a complement to their Rule 10b-5 claims, Section 29(b) of the 1934 Act also entitles Defendants to void their investment contracts and receive ancillary remedies.[11]

> Every contract made in violation of any provision of this chapter or of any rule or regulation thereunder, and every contract . . . heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this chapter or any rule or regulation thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, or regulation, shall have made or engaged in the performance of any such contract . . .

15 U.S.C. § 78cc(b).[12] Where Section 29(b) is invoked, the available remedy is rescission,[13] including return of the consideration paid and "interest thereon."

Defrauded Madoff Securities customers are also entitled to substantive state law tort remedies, including interest.[14] Indeed, New York law ***compels*** the award of interest under the circumstances here: "It has been the settled rule that interest must be allowed as a matter of right on recoveries for intentional tort with respect to property and property rights." *DeLong Corp. v. Morrison-Knudsen Co., Inc.*, 20 A.D.2d 104, 107 (N.Y. App. Div. 1963) (citing *Flamm v. Noble*,

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[11] *See, e.g.*, *American Gen. Ins. Co. v. Equitable Gen. Co.*, 493 F. Supp. 721, 767-68 (E.D. Va. 1980) (holding that plaintiffs were entitled to rescission and prejudgment interest from the date of the initial fraudulent transfer under 29(b)); *Cant v. A.G. Becker & Co., Inc.*, 384 F. Supp. 814, 816 (N.D. Ill. 1974) ("A failure to assess interest . . . would have the affect [sic] of allowing parties to speculate with the funds of innocent persons, without fully compensating such victims for the unlawful use of their assets."); *Scheve v. Clark*, 596 F. Supp. 592, 594 (E.D. Mo. 1984) (proper remedy in federal securities claims includes pre-judgment interest at a rate "which will adequately compensate the plaintiffs for the loss of the use of their money.").

[12] *See also Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 387-88 (1970) (reading "void" in Section 29(b) to mean "voidable at the option of the innocent party").

[13] The same damage principles that govern the express rescission remedy in Section 12(a)(2) of the 1933 Act govern the parallel rescission remedy set forth in Section 29(b) of the 1934 Act. *See Randall*, 478 U.S. at 662-63 and discussion *supra*.

[14] New York courts have long recognized that fraud victims are entitled to either (i) disaffirm the contract by a prompt rescission; or (ii) stand on the contract and maintain an action at law for damages attributable to the fraud. *Big Apple Car, Inc. v. City of New York*, 204 A.D.2d 109, 110-11 (N.Y. App. Div. 1994).

296 N.Y. 262 (N.Y. 1947), *aff'd*, 14 N.Y.2d 346 (N.Y. 1964)), *aff'd*, 200 N.E.2d 557 (N.Y. 1964); *see also Purcell v. Long Island Daily Press Publ'g Co.*, 9 N.Y.2d 255, 257-58 (N.Y. 1961).

New York has codified and expanded this rule. *See* N.Y. C.P.L.R. § 5001(a) ("Interest shall be recovered upon a sum awarded . . . because of an act or omission depriving or otherwise interfering with title to, or possession or enjoyment of, property"); *Mallis v. Bankers Trust Co.*, 717 F.2d 683, 694-95 (2d Cir. 1983) (statutory enactment did not constrict common law rule); *see also DeLong Corp. v. Morrison-Knudsen Co., Inc.*, 14 N.Y.2d 346, 348 (N.Y. 1964). It is "New York's prevailing policy, interwoven into § 5001, that '[i]nterest must be added [in actions where persons are deprived of the use of money] if we are to make the plaintiff whole." *Mallis*, 717 F.2d at 695 (quoting *Prager v. New Jersey Fid. & Plate Glass Ins. Co.*, 245 N.Y. 1. 6 (N.Y. 1927).

Likewise, Madoff Securities customers held claims for breach of fiduciary duties from the inception of their relationship with Madoff Securities.[15] These claims also entitle Madoff Securities customers to interest in addition to principal;[16] indeed, the New York Court of Appeals

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[15] The New York Court of Appeals has recently reaffirmed the viability of the common law claim for breach of fiduciary duty in the securities context, rejecting the notion that it is preempted by the Martin Act. *See Assured Guar. (UK) Ltd. v. J.P. Morgan Inv. Mgmt. Inc.*, 18 N.Y.3d 341, 351 (N.Y. 2011). In New York, a "broker who has discretionary powers over an account owes his client fiduciary duties." *Lowenbraun v. L.F. Rothschild*, 685 F. Supp. 336, 343 (S.D.N.Y. 1988). Where such a relationship exists, a broker's failure to invest in securities, thereby "abusing the position as broker-agent to gain profits at the client's expense," gives rise to a damages claim against the faithless fiduciary. *Id.*

[16] New York law recognizes that a breach of fiduciary duty entitles a claimant to pre-judgment interest. *Wolf v. Rand*, 258 A.D.2d 401, 403-04 (N.Y. App Div. 1999). Courts award prejudgment interest on equitable claims such as rescission because the plaintiff should be "compensated for being deprived of the use of its money." *USPS v. Phelps Dodge Refining Corp.*, 950 F. Supp. 504, 518 (E.D.N.Y. 1997). Similarly, courts applying the Restatement frequently provide interest payments in breach of fiduciary duty cases. *E.g.*, *In re Estate of*

recently confirmed that compensation for loss of the time value of money is mandatory. *NML Capital v. Republic of Argentina*, 17 N.Y.3d 250, 265-66 (N.Y. 2011).[17] New York's statutory interest rate is 9%. N.Y. C.P.L.R. § 5004.

3. Defendants' claims also entitle them to retain additional amounts under Section 548(c), such as lost opportunity costs.

Defendants' legal claims carry rights in addition to rescission and recovery of principal with interest. While the amount of any given defendant's damages claim will vary depending on the facts, the existence of valid underlying legal claims for amounts in excess of principal cannot reasonably be disputed.

Federal securities fraud claims also include consequential damages, including out-of-pocket costs and lost opportunity damages. *See, e.g., Rolf,* 637 F.2d at 86-87; *Zeller v. Bogue Elec. Mfg. Corp.*, 476 F.2d 795, 803 (2d Cir. 1973) (consequential damages are available for federal securities law claims when they are established with certainty); *cf. Stevens v. Abbot, Proctor & Paine*, 288 F. Supp. 836, 850-51 (E.D. Va. 1968) (finding that percentage of capital gains taxes due to defendant's fraudulent conduct were recoverable as actual damages).

Likewise, New York courts have long recognized that fraud victims are entitled to recover consequential damages attributable to the fraud. *Big Apple Car, Inc*, 204 A.D.2d at 110-

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Newhoff, 107 Misc.2d 589, 595-96 (N.Y. Surrogate's Ct. 1980) (measure of damages where initial investments of trust monies are found imprudent is "the amount of funds invested *plus the legal rate of interest* from the date of investments with appropriate credits for the moneys received on account of such investments.") (emphasis added).

[17] In *Capital*, the court recognized a distinct injury for the loss of use of funds, separate and apart from the obligation to return principal, because "plaintiffs are entitled to be compensated for the loss of the time value of that money – which can be accomplished only by awarding them statutory interest on the unpaid interest only payments." 17 N.Y.3d at 266. The court explained that "[a]bsent this component of damages, plaintiffs would be reimbursed only for their loss of use of the principal – and not for loss of use of the periodic interest payments, a separate injury." *Id.*

11. In New York, a breach of fiduciary duty claim carries lost opportunity damages. *See 105 East Second St. Assocs. v. Bobrow*, 175 A.D.2d 746, 747 (N.Y. App. Div. 1991) (damages for breach of fiduciary duties include "lost opportunities for profit . . . by reason of the faithless fiduciary's conduct").[18] In an analogous scenario, the Second Circuit applied the Restatement (Second) of Trusts to conclude that "[o]ne appropriate remedy in cases of breach of fiduciary duty is the restoration of the trust beneficiaries to the position they would have occupied but for the breach of trust." *Donovan v. Bierwirth*, 754 F.2d 1049, 1056 (2d Cir. 1985) (remedies for breach of fiduciary duties under ERISA). All of these claims for damages constitute value under Section 548(c).[19]

SIPA preserves these claims and remedies through Section 28(a)(2) of the 1934 Act. Thus, they are part of the fabric of SIPA for evaluating the statutory defense by a good faith transferee to an avoidance action by the SIPA Trustee. The Trustee's avoidance powers under SIPA are subject to these statutory limitations, as discussed below.[20]

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[18] *See also* RESTATEMENT (SECOND) OF TORTS § 874 Cmt. b (1979) (stating that remedies for breach of fiduciary duty may include "tort damages for harm caused by the breach," "restitutionary recovery," and "profits that result to the fiduciary from his breach of duty").

[19] Other state law and UCC contract claims, which the Court specifically rejected in *Greiff*, are referenced below in Section III.

[20] All of these claims are consistent with the undeniable economic truth that a dollar deposited many years ago is worth more than a dollar deposited today. *See Metro. Life Ins. Co. v. Murel Holding Corp.* (*In re Murel Holding Corp.*), 75 F.2d 941, 942 (2d Cir. 1935) ("payment ten years hence is not generally the equivalent of payment now"). Madoff Securities' use of Defendants' money, and the benefit of the time value of that money, constitutes value under Section 548(c).

4. Congress did not expand the SIPA trustee's avoidance powers beyond those accorded bankruptcy trustees generally.

a. SIPA's Section 8(c) is consistent with Section 548(c) of the Bankruptcy Code.

Greiff held that a transferee's use of Section 548(c) must be limited to preserving principal to avoid interfering with the policies undergirding Section 8(c)(3) of SIPA. *Greiff*, 2012 WL 1505349, at *9-10. But SIPA does not displace any part of Section 548(c). Rather, the two provisions reflect a Congressional balance between the goal of empowering bankruptcy trustees to recover fraudulent transfers and the competing policy considerations of promoting stability and finality of transactions in Section 548(c).

Courts have a duty to reconcile provisions in related federal statutes, not to find a conflict between them. *Kawasaki Kisen Kaisha, Ltd. v. Regal-Beloit Corp.*, 130 S. Ct. 2433, 2447 (2010) (statutes should be construed to be consistent with one another where the text permits). Only in the extreme case where it is impossible to reconcile two federal statutes may a court conclude that one is to be preferred over the other. *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124, 141-42 (2001) (irreconcilable conflict between two statutes required for implied repeal); *Morton v. Mancari*, 417 U.S. 535, 550 (1974) (absent affirmative demonstration of intention to repeal, implied repeal is only permissible where statutes are irreconcilable).

There is nothing on the face of SIPA that conflicts with Section 548(c), which permits innocent customers to retain the amounts provided by federal and state substantive law as remedies for fraud. The SIPA statute borrows from the avoidance powers established by the Bankruptcy Code. *See* 15 U.S.C. § 78fff-1(a) (SIPA Trustee is "vested with the same powers . . . as a trustee in a case under title 11."); *Picard v. HSBC Bank PLC,* 454 B.R. 25, 30 (S.D.N.Y. 2011) (finding that "the powers of a SIPA trustee are still, as indicated, cabined by Title 11")

(citing 15 U.S.C. § 78fff-2(c)(3)); *Greiff*, 2012 WL 1505349, at *6 n.7 ("SIPA expressly incorporates the limitations Title 11 places on [a] trustee's powers . . .").

SIPA's Section 8(c)(3) has the limited purpose of granting a SIPA Trustee standing to recover customer property. *Picard v. Merkin* (*In re Bernard L. Madoff Inv. Secs.),* 440 B.R. 243, 272 (Bankr. S.D.N.Y. 2010) (Section 8(c)(3) "creates a fiction that grants the trustee standing to bring avoidance actions under the Code."). Where the trustee is able to recover property that had been taken from the pool of customer property at the broker, the statute permits the trustee to return it to that pool for the benefit of customers when there is a shortfall of customer property.[21] Section 8(c)(3) employs the same language as Section 7 in granting to the trustee the powers to "recover any property transferred by the debtor which, except for such transfer, would have been customer property if and to the extent such transfer is voidable or void under the provisions of

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[21] Both SIPA and the Bankruptcy Code separate the distribution of property of the estate from questions of recovery. *Compare* SIPA, Section 8(c)(1), 15 U.S.C. § 78fff-2(c)(1) *with* Bankruptcy Code, Section 726, 11 U.S.C. § 726. A transfer that a trustee avoids under Section 548 and recovers under Section 550 becomes the property of the estate available for distribution to general creditors. *See* 11 U.S.C. §§ 541(a)(3), 550(a). Similarly, under SIPA, once a transfer is avoided and recovered it becomes part of the fund of customer property and is eligible for priority distribution to customers pursuant to Section 8(c)(1).

Like its bankruptcy analog, Section 726, Section 8(c)(1) of SIPA contains a priority scheme for distributions. Customer net equity claims have the highest priority, and if funds remain after satisfying these priority claims and reimbursing SIPC, they are available for distribution to unsecured creditors. This is no different from the Bankruptcy Code, which provides for payment of priority claims and costs of administration before payment of unsecured claims.

There is no question that claims of any priority constitute value under Section 548(c) in a typical bankruptcy case. Because the recovery and priority schemes of SIPA and the Bankruptcy Code are entirely consistent with one another, there is no basis to rule that a legitimate debt must also satisfy the Trustee's "net equity" definition to constitute value in a SIPA case. In the bankruptcy context, this would be equivalent to finding that where it is likely that only priority creditors will receive distributions, only priority or administrative claims constitute value under Section 548(c). This is obviously improper, because it conflates recovery and priority in a way not contemplated by the Code.

title 11" of the United States Code. 15 U.S.C. § 78fff-2(c)(3). Title 11 limitations on the trustee's powers undisputedly include the defenses in Section 548(c).

In contrast, the Section 548(c) defense reflects the policy and purpose of the fraudulent transfer provisions of the Bankruptcy Code. As this Court noted in *Greiff*, these provisions are not intended to address or enhance equality of treatment of creditors. *Greiff*, 2012 WL 1505349, at *6 n.8; *see also Boston Trading Grp., Inc. v. Burnazos*, 835 F.2d 1504, 1509 (1st Cir. 1987) ("The basic object of fraudulent conveyance law is to see that the debtor uses his limited assets to satisfy *some* of his creditors; it normally does not try to choose among them."). That is the purpose of the bankruptcy preference provisions. *See* H.R. Rep. No. 95-595, at 177-78 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6138 ("The preference provisions facilitate the prime bankruptcy policy of the equality of distribution among creditors of the debtor."). For this reason, Congress deliberately chose a much shorter reach back period (ninety days for non-insiders) for preferences made to creditors. *See* 11 U.S.C. § 547. The longer two-year reach back period for fraudulent transfer actions reflects the very different goal of those provisions: to prevent the debtor from colluding with others to dismember the estate.

There is thus no statutory conflict between Section 8(c)(3) and Section 548(c). *See Greiff*, 2012 WL 1505349, at *9-10. Where an avoidance defendant acted in good faith, and has received payments on account of valid debt, the fraudulent transfer provisions have no application. This is the core of the Second Circuit's holding in *In re Sharp Int'l Corp.*, 403 F.3d 43, 54-56 (2d Cir. 2005) (under analogous state law, a conveyance that satisfies an antecedent debt is not fraudulent, "even if its effect is to prefer one creditor over another"); s*ee also In re Champion Enters., Inc.*, 2010 WL 3522132, at *20 (Bankr. D. Del. Sept. 1, 2010) (dismissing

fraudulent transfer claims where plaintiff did not plead bad faith).[22] Put differently, it is irrelevant whether debt is senior or junior; as long as the debtor is paying a legitimate claim, the recipient has given value to the debtor in exchange for the claim. These policy concepts are enshrined in Section 548(c).

If Congress had wished to limit the availability of the Section 548(c) defense in SIPA avoidance actions, it could easily have said so. *Travelers Cas. & Sur. Co. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 445 (2007) ("where Congress has intended to provide . . . exceptions to provisions of the Bankruptcy Code, it has done so clearly and expressly") (internal citation omitted). But it did not. The same policy considerations underpin this Court's holding that Section 546(e) limits a SIPA Trustee's avoidance powers. *Greiff*, 2012 WL 1505349, at *2-5.

No public policy justifies granting to a SIPA trustee broader avoidance powers than bankruptcy trustees. Indeed, the Trustee's position leads to an untenable conclusion: that Congress expressly adopted the Bankruptcy Code but tacitly supplanted some of its provisions. Under this reading, the Code is merely advisory, not conclusive regarding the Trustee's powers. This reading is inconsistent with basic principles of statutory construction. The policy considerations underlying Section 548(c), which permit Defendants to retain amounts paid on account of legitimate debts, must be honored.

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[22] *Sharp's* actual holding, as noted in *Greiff*, is that the trustee in that case had not properly pled a fraudulent conveyance claim under New York law. *See In re Bayou Grp., LLC*, 362 B.R. 624, 638 (Bankr. S.D.N.Y. 2007). For purposes of this brief only, Defendants do not argue that the Trustee has not properly pled an avoidance claim. Rather the issue presented here is the scope of the statutory defense of good faith, an issue not addressed by *Sharp*. *Sharp*'s review of the purpose of the fraudulent transfer statutes remains good law.

b. SIPA does not redefine the meaning of "antecedent debt."

Greiff appears to hold that some rights to payment do not fall under the statutory definition of "claims" constituting "value" within the meaning of Section 548(c). *Id.* at *7-8. But the notion that SIPA somehow preempts valid state claims for recovery of more than principal cannot be reconciled with the express statutory savings provision in Section 28(a) of the 1934 Act (not cited in *Greiff*), which applies to SIPA and expressly preserves all claimants' state law rights and remedies. Likewise, Congress could not have intended for SIPA to displace the express rescission remedy of Section 29(b) or the well-established implied remedies under Rule 10b-5 for recovery of principal and interest, when SIPA is a part of the very statute (the 1934 Act) that gives rise to those claims. *Supra* pp. 5-6.

Because SIPA does not expressly override any remedies and, in fact, incorporates the relevant portion of the 1934 Act that preserves them, there is no basis to conclude that SIPA implicitly repeals some remedies but preserves others. *See Brown v. Gardner*, 513 U.S. 115, 121 (1994) ("[C]ongressional silence lacks persuasive significance" on preemption question) (internal citation omitted); *O'Melveny & Myers v. FDIC*, 512 U.S. 79, 85 (1994) ("[M]atters left unaddressed in [a comprehensive and detailed federal] scheme are presumably left subject to the disposition provided by state law"); *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Maine*, 520 U.S. 564, 616 (1997) ("[O]ur pre-emption jurisprudence explicitly rejects the notion that mere congressional silence on a particular issue may be read as pre-empting state law").

Nor can any judicial "perceptions of the demands of equity" justify overriding these state and federal law claims. *See Butner v. United States*, 440 U.S. 48, 55-56 (1979) ("undefined considerations of equity provide no basis" for federal courts to reject state law in the absence of "congressional command" or "identifiable federal interest"); *Travelers*, 549 U.S. at 452

(rejecting judicially-created exclusion of state remedies, where no "provision of the Bankruptcy Code . . . provid[ed] support for the new rule").[23]

c. *Even assuming a Ponzi Scheme exception to the Bankruptcy Code exists, it does not apply to Defendants who are customers of a registered broker-dealer, rather than equity investors in the Ponzi Scheme.*

Greiff concluded that transfers in excess of a customer's principal were not made for value because they did not reflect a true return on investment and were instead intended by Madoff Securities to further the Ponzi scheme. *Greiff*, 2012 WL 1505349, at *7. Yet the statutory language does not permit a reading that makes the intent of the transferor determinative as to whether the transferee gave value to the debtor.

Greiff relies on a line of bankruptcy and receivership cases that invoke a Ponzi scheme exception to limit avoidance defendants to recovery of their principal. Unlike almost every case noted by the Trustee, however, the customers of Madoff Securities were not equity investors in the business of Madoff Securities, but were customers who deposited money with the registered broker for the purpose of purchasing and selling securities. Whatever the merits of the Ponzi scheme exception, it does not apply to the facts of these cases. It is one thing to say that the claims of investors who place their funds at risk as capital in a fraudulent business should be limited. It is another thing to say that brokerage customers who deposit their funds in a regulated entity should lose under SIPA – the very statute intended to protect them – all the legal rights and protections designed by state and federal law.

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[23] In both cases, the Court looked to the *text of the Bankruptcy Code* to determine whether Congress had identified a sufficiently compelling federal interest to abrogate particular state law rights in the context of a bankruptcy proceeding. *Butner*, 440 U.S. at 54 ("Congress has not chosen to exercise its power to fashion any such rule."); *Travelers*, 549 U.S. at 452 ("The absence of textual support is fatal for the [judicially created] rule.").

The closest analogous precedent is the Sixth Circuit decision in *Visconsi v. Lehman Bros.*, 244 F. App'x 708 (6th Cir. 2007). There is no meaningful distinction between the facts in *Visconsi* and those here. There, an official at Lehman perpetrated a Ponzi scheme by soliciting customer deposits of more than $21 million, and sending fictitious account statements to the customers who ultimately withdrew $25.8 million over several years. *Id*. at 710. Their broker eventually admitted that he had operated a Ponzi scheme and that the customers' actual account balances were negative, rather than the amount listed on their account statements. *Id*. at 709-10. The Sixth Circuit upheld an arbitration award against Lehman for $10 million in excess of the amount withdrawn, flatly rejecting the broker's argument that plaintiffs could not recover the amount shown on their statements:

> . . . the out-of-pocket theory, which seeks to restore to Plaintiffs only the $21 million they originally invested less their subsequent withdrawals, is a wholly inadequate measure of damages. Had [the broker] invested Plaintiffs' money as requested, their funds would have likely grown immensely . . . Plaintiffs thus . . . were entitled to the full $37.9 million balance shown, regardless of the amounts of their previous deposits and withdrawals.

Id. at 713-14;[24] s*ee also Redstone v. Goldman, Sachs & Co.*, 583 F. Supp. 74, 76-77 (D. Mass. 1984) (denying motion to dismiss customer breach of contract claims against broker-dealer seeking benefit-of-the-bargain damages).

The Trustee seeks to avoid any payments beyond original principal based on his allegation that to make such payments Madoff Securities used funds that it derived from new

[24] The Trustee's distinction of *Visconsi* – reflected in *Greiff* – that the difference in the scope of the respective frauds between those cases justifies benefit of the bargain damages in *Visconsi*, but not in this case, does not address the additional alternative federal and state remedies also available to victims like Visconsi discussed above. Even assuming that benefit of the bargain damages are unavailable for the reasons stated by the Court, there is no reasoned justification to ignore the other well-established remedies that are preserved by Section 548(c).

customers deposits rather than from investment revenues.[25] But in the absence of bad faith by the recipient, the source of Madoff Securities' funds is irrelevant to a Section 548(c) defense. Under time-honored principles, a payment that discharges a valid debt does not harm the payor's creditor body, making the origin of funds irrelevant. *Commodity Future Trading Comm'n v. Walsh*, 17 N.Y.3d 162, 173 (N.Y. 2011) ("to permit in every case of the payment of a debt an inquiry as to the source from which the debtor derived the money, and a recovery if shown to have been dishonestly acquired, would disorganize all business operations and entail an amount of risk and uncertainty which no enterprise could bear") (internal citation omitted); *Sharp*, 403 F.3d at 54-55; *Boston Trading Grp.,* 835 F.2d at 1508 (fraudulent conveyance law has a different lineage and purpose than the equitable doctrines of restitution); *see also Daly v. Parete (In re Carrozzella & Richardson)*, 270 B.R. 92, 97 (Bankr. D. Conn. 2001) (a transaction's illegality does not deprive the exchange of value).

The term "Ponzi scheme" does not appear in any statutory provision at issue here, nor is there any statutory exception for so-called "fictitious profits" under Section 548(c). Nonetheless, *Greiff* relies on *Donell, Scholes*, and *Hedged-Investments*, stating that "every circuit court to address this issue has concluded that an investor's profits from a Ponzi scheme, whether paper profits or actual transfers, are not 'for value.'" *Greiff*, 2012 WL 1505349, at *8. Yet, none of these cases involved customers of a brokerage firm. To the contrary, every defendant in those cases intended to place his capital at risk in a business enterprise, whether in a debt scheme or a hedge fund. *Donell* had nothing to do with a broker relationship, but rather involved an investor who was financing a receivable factoring operation. *Donell v. Kowell*, 533 F.3d 762 (9th Cir.

[25] Defendants note that the Trustee's premise, that one Madoff Securities' customer received redemptions out of another customer's funds, has not been established. *See also* n. 4.

2008). Both *Hedged-Investments* and *Scholes* involved sales of limited partnerships in an investment vehicle that was operated as a Ponzi scheme. *Hedged Invs. Assocs., Inc. v. Buchanan* (*In re Hedged Invs. Assocs., Inc.*), 84 F.3d 1286 (10th Cir. 1996); *Scholes v. Lehmann*, 56 F.3d 750 (7th Cir. 1995).

This is a crucial distinction. The 1934 Act was designed to foster confidence in, and protect the integrity of, the securities markets; one of its central tenets was to protect customers of a broker-dealer, especially as the securities markets migrated from paper securities to the electronic book-entry system that is the heart of modern markets.[26] This is the very reason why Congress enacted SIPA and made it part of the reforms of the securities laws that facilitated the national market system. To read SIPA to displace the federal securities laws that provide special protection to brokerage customers is to misread the policies that undergird those laws. More importantly, Congress did not leave it to courts to divine SIPA's purpose. Congress was express in making it clear through Section 28(a)(2) of the 1934 Act – and making SIPA part of that Act – that it intended to preserve rights and remedies, not displace them.[27]

Furthermore, the invocation of equity ignores the complexities that would be involved in any true attempt to balance the equities here. As one court noted:

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[26] *See* Section 2 of the 1934 Act.

[27] Other cases that attempted to engraft an exception to standard bankruptcy law in the case of Ponzi schemes are equally unpersuasive. None involves customers of a broker-dealer who deposited funds for the purpose of purchasing securities. *Merrill v. Abbott (In re Independent Clearing House Co.)*, 77 B.R. 843 (D. Utah 1987), and its progeny erroneously found that investors in a Ponzi scheme who were not customers of a registered broker were not entitled to more than their initial investment based on a perceived public policy of equality of treatment among investors. *Merrill's* equity analysis ignores the plain language of the Bankruptcy Code discussed above and the admonition in *Butner* that bankruptcy courts must recognize the substantive rights of the parties afforded by state law. *See Butner*, 440 U.S. at 56 (a creditor must be "afforded in federal bankruptcy court the same protection he would have under state law if no bankruptcy had ensued."). Similarly, *In re Bayou Group, LLC*, 439 B.R. 284, 338 (S.D.N.Y. 2010), did not involve a broker-dealer.

> Some investors who received "fictitious profits" may have spent the money on education or other necessities many years ago. What else in equity and good conscience should plaintiffs who received money in good faith pursuant to an "investment contract" have done? In contrast, some investors who lost money may have been speculators who were prepared to lose their investments. There is simply no neat answer to the various equities involved here where the investors never knew each other and were equally at fault for trusting [the fraudster].

Johnson v. Studholme, 619 F. Supp. 1347, 1350 (D. Colo. 1985), *aff'd sub nom. Johnson v. Hendricks*, 833 F.2d 908 (10th Cir. 1987). Such court decisions make policy determinations that are better left to Congress:

> [b]y forcing the square peg facts of a 'Ponzi' scheme into the round holes of the fraudulent conveyance statutes in order to accomplish a further reallocation and redistribution to implement a policy of equality of distribution in the name of equity, I believe that many courts have done a substantial injustice to those statutes and have made policy decisions that should be made by Congress.

In re Unified Commercial Capital, Inc., 260 B.R. 343, 350 (Bankr. W.D.N.Y. 2001); *see also Butner*, 440 U.S. at 54; *Travelers*, 549 U.S. at 451 (courts cannot look to undefined equitable considerations to avoid application of federal statute).[28]

Finally, the Second Circuit's Net Equity decision on the "net equity" calculation has no bearing on Section 548(c) defenses. The Second Circuit's determination of whether a customer has a priority claim under the SIPA statute is irrelevant to the question of whether that customer has a defense to a bankruptcy avoidance action under Section 548(c). There, addressing the provisions of SIPA that speak to calculating the amount of a customer claim from the books and records of the broker-dealer, the Court simply held that the Trustee's interpretation of the term "net equity" was within his discretion. That issue is irrelevant to a Section 548(c) defense. It is

[28] While some courts recognize that investors in a Ponzi scheme are limited in what they may recover, others who deal with the Ponzi scheme but are not direct investors are protected in their transfer to the extent that they dealt with the enterprise in good faith. *B.E.L.T., Inc. v. Wachovia Corp.*, 403 F.3d 474, 477 (7th Cir. 2005) ("Someone who sells a car at the market price to Charles Ponzi is entitled to keep the money without becoming liable to Ponzi's victims for the loss created by his scheme.").

inappropriate to extrapolate from that limited holding a rule sharply restricting the value defense, and it is inconceivable that the scope of a statutory affirmative defense would be subject to the Trustee's discretion.

The issue in these avoidance actions is whether the payments by Madoff Securities satisfied obligations that existed *at the time the payments were made*, rather than how obligations *at the time of a later SIPA liquidation* might eventually be treated. *Armstrong v. Collins,* 2010 WL 1141158, at *20 (S.D.N.Y. Mar. 24, 2010) ("The critical time to determine whether a debtor received reasonably equivalent value is the time of the transfer."). The Second Circuit's analysis did not address whether Section 548(c) applies to avoidance claims, because it arose under different statutory provisions with distinct policy considerations from those in the bankruptcy avoidance process.

B. Because the Trustee cannot avoid obligations older than the applicable reach-back period, customers should be credited for their account balances as of the beginning of the reach-back period.

Underlying the Trustee's calculation of amounts owed in his lawsuits against customers is the unstated premise that he can avoid Madoff Securities' account statement obligations to its customers. Avoidance of obligations is governed by Bankruptcy Code Section 548(a)(1), which allows a trustee to avoid not just a fraudulent "transfer" but also any fraudulent "obligation . . . incurred."[29] The account statements are obligations of Madoff Securities. *See* Section III. They

[29] Defendants do not concede that the Trustee has the authority to avoid obligations incurred by the Debtor, because SIPA expressly limits his avoidance powers. Section 78fff-1(a) provides only that "[a] trustee shall be vested with the same powers and title with respect to the debtor and the property of the debtor, *including the same rights to avoid preferences*, as a trustee in a case under [the Bankruptcy Code]." 15 U.S.C. § 78fff-1(b) (italics added). Section 78fff-2(c)(3), moreover, speaks only of the SIPA trustee's power to recover "property *transferred* by the debtor … if and to the extent that such *transfer* is voidable or void" under the Bankruptcy Code. *See* 15 U.S.C. § 78fff-2(c)(3) (emphasis added); *compare* 11 U.S.C. §§ 548(a)(1), 544(b)(1)) (which empower a bankruptcy trustee to avoid both transfers and "obligations

may be potentially avoidable obligations, but until and unless they are avoided they are valid obligations – just as transfers are valid until shown to be avoidable.

The Trustee has now apparently come to the belated recognition that his litigation framework is structurally defective: he indeed must avoid Madoff Securities' obligations in order to vitiate Defendants' value defenses based on those statements. Presumably motivated by this recognition, the Trustee recently started to overhaul his complaints by amending them to assert that the Madoff Securities' obligations incurred with respect to its account statements should be avoided. *Compare* Kirby Ex. C (Amended Complaint Example) at ¶ 3 *with* Kirby Ex. B (Original Complaint Example) at 2 (original complaint seeks to avoid transfers, making no mention of avoiding obligations).

However, the Trustee's amended complaints highlight a hole in his theory: that is, the Trustee's power to avoid obligations is subject to the applicable reach-back period set by law. The Trustee simply has no authority to avoid obligations that go back decades before the petition date. Those obligations are as immune from avoidance as are transfers to Defendants that occurred long before the applicable reach-back period. The Trustee's position simply reads out of the Bankruptcy Code the avoidance-of-obligations provisions of Section 548(a) and the statutory reach-back period for avoidance of obligations actions.

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incurred"). SIPA's single reference to avoidance of "preferences" must be read in light of the scope of the power to avoid preferences under Section 547 of the Bankruptcy Code, 11 U.S.C. § 547, which refers only to avoidance of "transfers." *See In re Asia Global Crossing, Ltd.*, 333 B.R. 199 (Bankr. S.D.N.Y. 2005) (plain language of Section 547 reaches only transfers, not obligations). For the purposes of this brief, however, Defendants assume without conceding that the Trustee has such authority, subject to the limitations of Sections 548(c) and 546(e). Certain Defendants may seek to be heard on the statutory restrictions on the Trustee's power to avoid obligations.

This limitation on the Trustee's power to avoid obligations is in no way inappropriate or unfair. The limitation simply reflects the same statutory policies of repose and certainty that are incorporated into any statute of limitation. Thus, even if all Madoff Securities obligations incurred during the applicable reach-back period were avoided, Defendants would still be entitled to assert as an antecedent debt defense those obligations that arose prior to the reach-back period – including obligations based on Madoff Securities account statements.

The Trustee can assert no principled reason why his power to avoid obligations – unlike his power to avoid transfers – would be temporally unrestrained. Neither the statute nor the case law allows such an inference. *See, e.g., Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 24-25 (2000) ("Bankruptcy courts are not authorized in the name of equity to make wholesale substitution of underlying law controlling the validity of creditors' entitlements, but are limited to what the Bankruptcy Code itself provides."); *Lustig v. Weisz & Assocs. (In re Unified Commercial Capital, Inc.),* 260 B.R. 343, 350 (Bankr. W.D.N.Y. 2001) ("[T]he fraudulent conveyance statutes cannot and should not be utilized by courts as a super preference statute to effect a further reallocation and redistribution that should be specifically provided for in a statute enacted by Congress."). Indeed, the Trustee's approach was found objectionable by this Court in *Greiff*. 2012 WL 1505349, at *6 n. 7 (criticizing Trustee position to extent it would have the "'absurd effect' of displacing even statutes of limitation . . ."). *See also* Section II.A.2, below.

The Trustee seeks to recover indirectly withdrawals that he has no authority to pursue. The Trustee should not be permitted to undermine the clear legislative determination that only obligations incurred within the applicable statutory reach-back period are subject to avoidance.

II. Value Issues Not Previously Considered by the Court Require Dismissal.

A. Defendants are entitled to a credit for new deposits made with Madoff Securities during the Reach-Back Period.

This Court has twice ruled that Bankruptcy Code Section 546(e) limits the Trustee to pursuing only actual fraudulent transfers occurring within the two-year reach-back period (the "Reach-Back Period") of Section 548(a)(1). *Picard v. Katz*, 462 B.R. 447, 454-56 (S.D.N.Y. 2011) ("*Katz*"); *Greiff*, 2012 WL 1505349, at *11.

An open question remains as to how to calculate a defendant's potential liability during the Reach-Back Period. Defendants recognize that the Court in *Greiff* answered that question by incorporating the Trustee's proposed approach (the "Trustee Method"). However, *Greiff* did not address an issue critical for a large subset of Defendants: those who deposited new money with Madoff Securities during the Reach-Back Period. The Trustee Method has the effect of applying those new deposits against transfers to Defendants that the Trustee cannot pursue under *Katz* and *Greiff*, rather than against transfers within the Reach-Back Period that the Trustee can pursue. *See, e.g.*, Kirby Ex. D ("New Deposit Complaint Example") at ¶ 2 (reflecting netting of deposits and withdrawals over life of relationship, notwithstanding two-year Reach-Back Period). Notably, the treatment of new money deposits was not briefed by any party in *Greiff*, and the single decision cited by the Court in support of the Trustee Method, *Donell v. Kowell*, 533 F.3d 762 (9th Cir. 2008), did not involve or address this issue.

The Court should adopt an approach that gives credit to Defendants who replenished the Madoff Securities estate with new money during the Reach-Back Period (the "Replenishment Credit Method"). As discussed below, this is the only way to determine potential liability that is consistent with the applicable statutory Reach-Back Period, Section 550(d)'s prohibition against a trustee's double recovery and relevant case law. The Replenishment Credit Method also

produces fair and reasonable results. In contrast, the Trustee Method, when applied to customers with Reach-Back Period deposits, would permit the Trustee to circumvent the statutory Reach-Back Period recognized by this Court in *Katz* and *Greiff* and would generate anomalous and unfair results, all as discussed below.

Defendants believe that the replenishment scenario, and its interplay with the statutory Reach-Back Period, is an issue of first impression. Although this issue may affect only a subset of Defendants, the aggregate amounts at stake are likely to be considerable, given the thousands of customers sued by the Trustee.

1. A credit for new deposits is mandated by the statutory Reach-Back Period.

Section 548(a)(1) of the Bankruptcy Code provides that the "trustee may avoid any [fraudulent] transfer . . . that was made . . . on or within 2 years before the date of the filing of the petition[.]" 11 U.S.C. § 548(a)(1). Congress made a clear legislative determination that a transferee has no liability to a bankruptcy trustee after two years has elapsed after a transfer.

As a result, no transfer to a Defendant occurring outside the Reach-Back Period is avoidable or recoverable by the Trustee. Put another way, as of the commencement of the Reach-Back Period, no Defendant had any liability to the Trustee, regardless of how much a Defendant had previously withdrawn. Only withdrawals made during the Reach-Back Period could arguably be subject to avoidance and recovery.

The Trustee Method, if applied to Defendants with Reach-Back Period deposits, would functionally permit the Trustee to sidestep the Reach-Back Period and indirectly avoid and recover withdrawals made by Defendants years or even decades prior to the Reach-Back Period. The Trustee has no statutory or other authority to pursue time-barred transfers directly and

should not be given the power to do so indirectly by applying Reach-Back Period deposits against old withdrawals.

The Trustee has argued that the Trustee Method is the only way to "socialize the losses" suffered by Madoff Securities customers and is somehow required under the Second Circuit's Net Equity decision. However, this Court has already ruled that neither the Trustee's belief as to what is equitable nor the Net Equity decision justifies ignoring the applicable Reach-Back Period. *Greiff*, 2012 WL 1505349, at *6 n. 7 ("Taken literally, moreover, the Trustee's position would have 'the absurd effect' of displacing even statutes of limitation, which prevent the Trustee from recovering any fictitious profits that a client received more than six years prior to the date on which Madoff Securities filed for bankruptcy. [The Net Equity decision] does not permit the Trustee to suspend the whole legal order in pursuit of a result he regards as equitable.").[30] The Trustee should not be given license to extend indefinitely the two-year statutory Reach-Back Period, thus thwarting the salutary policies underlying Section 548(a) 's reach-back – repose, certainty and finality. *See Rotella v. Wood*, 528 U.S. 549, 555 (2000) ("basic policies" underlying "all limitations provisions: repose, elimination of stale claims and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities.").

2. There is no basis in the law for the Trustee to apply Reach-Back Period deposits in satisfaction of time-barred potential fraudulent transfers.

The Trustee has articulated no doctrinal basis in support of the Trustee Method, likely because there is none. Indeed, a fatal flaw to the Trustee's approach is that time-barred

[30] Other courts have agreed that the reach-back period must be respected, including in Ponzi scheme cases. *See*, *e.g.*, *In re Independent Clearing House Co.*, 77 B.R. 843, 887 (D. Utah 1987) (even though in a Ponzi scheme "by definition, *all* transfers by the debtor are fraudulent," the bankruptcy trustee was limited to recovering transfers only within the reach-back period of Section 548 because "[s]uch a bright-line standard, like a statute of limitation or repose, gives certainty and finality to business transactions.").

fraudulent transfer claims would be used offensively to increase the maximum fraudulent transfer exposure of Defendants – a result that is routinely rejected by other courts. *See, e.g.*, *In re Clayton Magazines, Inc.*, 77 F.2d 852, 853 (2d Cir. 1935) (disallowing setoff of time-barred claim: "[O]ne against whom set-off is claimed must still be under the legal obligation to pay the amount of the set-off to the claimant."); *In re Gober*, 100 F.3d 1195, 1208 (5th Cir. 1996) (setoff "subject to the applicable statute of limitations").

In prior papers,[31] the Trustee cited *Donell* as precedent for his approach. But neither *Donell* nor any other case cited previously by the Trustee deals with the proper treatment of brokerage customers who, like many Defendants here, deposited funds during the applicable Reach-Back Period.

Donell itself involved a one-shot investment in a Ponzi scheme. The defendant invested $22,858 and subsequently received a total of $73,290, for a net profit of $50,431. *Donell*, 533 F.3d at 773. The Ninth Circuit noted with approval that "[t]he District Court properly limited the Receiver's recovery to amounts transferred to [defendant] within the statutory period[.]" *Id*.

There is no suggestion in *Donell* that the defendant made any investment other than his initial outlay. And there is certainly no discussion of the consequences of a new deposit of principal. The computational rule in *Donell* was not formulated with any consideration of how to treat deposits made within the statutory Reach-Back Period or of the complexities of the new investment scenario in light of the Reach-Back Period issue. Those issues simply were not

[31] This issue was briefed by certain Defendants on an *amicus* basis in *Katz*. However, that case settled before any decision was rendered on the issue. Neither the Trustee nor the *Greiff* defendants raised this issue in *Greiff*.

present in the case. Nor, to Defendants' knowledge, has this issue ever been presented or analyzed in any other reported decision.[32]

3. An illustrative hypothetical exposes the flaws in the Trustee's approach.

Given its dubious legal underpinnings, it is not surprising that the Trustee's approach to deposits yields illogical and unfair results. As illustrated by a simple hypothetical involving three good-faith customers (Customers A, B and C) below, the Replenishment Credit Method avoids these difficulties and fairly reconciles the competing interests within the constraints of the Reach-Back Period and the Court's rulings in *Katz* and *Greiff*.

Customer name	Amount deposited in 1988	Amount withdrawn in June 2006 (outside Reach-Back Period)	Amount withdrawn in January 2007 (within Reach-Back Period)	Amount deposited in June 2007	Subsequent deposits/withdrawals during Reach-Back Period	Effect on estate of transactions in Reach-Back Period	Results under Replenishment Credit Approach	Results under Trustee Method
Customer A	$200,000	$400,000	$50,000	$50,000	None	No effect	Customer not liable	Customer liable for $50,000
Customer B	$200,000	$400,000	$50,000	None	None	Estate diminished by $50,000	Customer liable for $50,000	Customer liable for $50,000
Customer C	$200,000	$400,000	$50,000	$100,000	$100,000 withdrawn; $100,000 deposited	Estate enriched by $50,000	Customer not liable	Customer liable for $150,000

Customer A deposits $200,000 with Madoff Securities in 1988 and withdraws $400,000 in June 2006 (outside the two-year Reach-Back Period), thereby resulting in a $200,000 potential

[32] The dearth of relevant case law on this issue is not surprising. Few fraudulent investment schemes prior to Madoff Securities were sufficiently long-lasting and seemingly successful as to (i) generate significant long-term additional deposits, and (ii) produce starkly different results based on application of the Reach-Back Period.

exposure before the two-year period.[33] In January 2007 (within the two-year period), Customer A withdraws another $50,000 and shortly thereafter deposits $50,000 with Madoff Securities.

Under the Trustee's approach, Customer A's liability would be calculated as total withdrawals ($450,000) less total deposits ($250,000) over the 20-year life of the relationship, resulting in $200,000 excess of withdrawals over deposits. The Trustee's recovery would then be limited to the $50,000 actually received by Customer A during the two-year period. *See* Chart, last column.

But Customer A should have no liability, because the estate was not harmed during the applicable two-year Reach-Back Period. The transactions were a wash ($50,000 withdrawn but then re-invested). *See*, *e.g.*, *In re Lease-A-Fleet*, *Inc.*, 155 B.R. 666, 672 (E.D. Pa. 1993) (dismissing fraudulent transfer claims because "most of the transfers to the [insiders] were characterized as 'circles of cash' in which the same or nearly the same amount of funds flowed . . . back to the Debtor[.]"); *In re Adelphia Commc'ns Corp.*, 2006 WL 687153, at *15 (Bankr. S.D.N.Y. Mar. 6, 2006) (holding it "the ultimate exercise in the elevation of form over substance" to void transfers that ultimately returned to debtor); *In re Cybridge Corp.*, 312 B.R. 262, 270-71 (D.N.J. 2004) (barring recovery of transfers defendant had restored to estate on grounds that, under Bankruptcy Code § 550(d), "the trustee is entitled to only a single satisfaction under" § 550(a)); *Kingsley v. Wetzel*, 518 F.3d 874, 878 (11th Cir. 2008) (recovery of funds defendant used to pay debtor's bills "would result in an inequitable windfall" for the estate).

[33] Even though doubling one's money sounds impressive, this return over the 18 years from 1988 to 2006 represents only a 4% compounded interest rate – a modest investment result during the years in question.

Notably, although Customer A's transactions had no effect on the estate during the relevant two-year period, **Customer B's** transactions depleted the estate by $50,000. Yet the Trustee would treat these two customers identically. Even more absurdly, **Customer C's** transactions *enriched* the estate by $50,000 over the two-year period, yet Customer C would end up owing the Trustee $150,000 – *three times* the amount owed by either of the other customers. Such anomalous, arbitrary results violate the touchstone of fraudulent transfer jurisprudence: whether the estate was "unfairly diminished." *HBE Leasing Corp. v. Frank*, 48 F.3d 623, 635 (2d Cir. 1995).

4. The Replenishment Credit Method yields the logical and fair result.

The Replenishment Credit Method avoids all these problems and reaches the fair and intuitively correct result. As illustrated by the chart above, these three hypotheticals resolve exactly as one would expect: Customer A ($50,000 redeemed, $50,000 deposited during the two-year period) would have no liability; Customer C ($150,000 redeemed, $200,000 deposited during the two-year period) would have no liability; and Customer B ($50,000 redeemed, with no additional deposits during the two-year period) would be liable for $50,000, subject to any other applicable defenses. *See also* Peter A. Zisser, "Madoff and Net Investment Method; Equity Goes Where the Law Fears to Tread," 23 Bankr. L. Rep. (BNA) (Vol. 44) 1438, 1439 (2011) (in SIPA recovery context, the Trustee "should be prohibited from netting any payments to customers done more than a maximum of two years ago against deposits made by a customer less than two years ago").

The Replenishment Credit Method also fairly treats the customer whose first Reach-Back Period transaction is a deposit, not a withdrawal. That customer would, by definition, enter the first day of the two-year Reach-Back Period with no liability. So if a new-money deposit was

the first transaction, it would simply be considered a principal investment and treated as "antecedent debt" value, just like any other deposit.

5. The Replenishment Credit Method is supported by Section 550(d) of the Bankruptcy Code and relevant case law.

The Replenishment Credit Method is well supported by longstanding statutory and case law principles. It is axiomatic that the goal of fraudulent transfer law is restitution, not punishment. *See, e.g., In re Centennial Textiles, Inc.*, 220 B.R. 165, 176 (Bankr. S.D.N.Y. 1998) (Section 550(a) enacted "to restore the estate to the financial condition it would have enjoyed if the transfer had not occurred.") (citations omitted); *In re Patts*, 470 B.R. 234, 2012 WL 1570812, at *8-9 (Bankr. D. Mass. May 4, 2012) (holding that there can be no recovery when there is no loss to the estate).

Congress was careful to specify in Section 550(d) that "[t]he trustee is entitled to only a single satisfaction under subsection (a) of this section." 11 U.S.C. § 550(d). Courts have consistently held that a good faith recipient of a fraudulent transfer that gives value to the debtor during the applicable Reach-Back Period must be given a credit to the extent of that replenishment. Thus, a trustee cannot recover "'from a transferee that has already returned to the estate that which was taken in violation of the Code.'" *In re Kingsley*, 2007 WL 1491188, at *3 (Bankr. S.D. Fla. May 17, 2007) (citations omitted), *aff'd* 518 F. 3d 874 (11th Cir. 2008).[34]

In *In re Jackson*, the defendant used proceeds from the sale of fraudulently transferred property to pay certain of the debtor's expenses. 318 B.R. 5, 27-28 (Bankr. D.N.H. 2004), *aff'd* 459 F.3d 117 (1st Cir. 2006). The court ruled that "in the absence of any finding of actual fraud,

[34] *Accord Belford v. Cantavero (In re Bassett)*, 221 B.R. 49, 55 (Bankr. D. Conn. 1998) (avoidance claim satisfied, so any additional recovery would constitute a windfall to the estate); *In re Patts,* 2012 WL 1570812, at *9 (same); *In re Clarkston,* 387 B.R. 882, 891 (Bankr. S.D. Fla. 2008) (defendant entitled to credit for pre-petition payment to debtor).

it would be a windfall to the estate to allow the [p]laintiff full recovery . . . without making an equitable adjustment to account for the proceeds the [d]efendant used to pay the Debtor's bills and cover the family expenses." *Id.* at 27-28. It was held "equitable" under the facts of the case "to credit the [d]efendant for the expenditures she made that the Debtor could have legitimately made if the constructively fraudulent transfers had not occurred." *Id.* at 28.

In *In re Cybridge Corp.,* 312 B.R. 262, 271 (D.N.J. 2004), a secured receivables lender (with no knowledge of the Chapter 11 filing) continued post-petition to advance money to the debtor and collect on the debtor's receivables. *Id.* The District Court affirmed the bankruptcy court's ruling that the lender should have no liability, noting that the trustee's "right to recover under Section 550(a) had already been satisfied" because the factor advanced to the debtor more than it collected from accounts receivable. *Id.* at 271-72. As an alternative holding, the court ruled that it was proper, under the court's equitable power under Section 105(a), to give an "equitable credit" to the factor to avoid a windfall to the estate. *Id.* at 272-73.

Defendants were entitled to a similar credit in *In re Sawran*, 359 B.R. 348, 350 (Bankr. S.D. Fla. 2007). There, the debtor gave proceeds of a personal injury settlement to her father. He, in turn, transferred a portion of the funds to other children and instructed them to disburse money back to the debtor. The court reduced the trustee's recovery against the defendants by the amount that had been returned to the debtor pre-petition. The court was careful to note that defendants were "innocent of wrongdoing and deserve[d] protection under [the] circumstances," and "were not motivated by personal gain." *Id.* at 354. The court also noted that to allow the trustee to recover the full amount "would create a windfall . . . that violates the single satisfaction rule of section 550(d)." *Id.* at 352-53. The court also held that Section 105(a) of the Bankruptcy Code provided an alternative basis for giving a credit to the defendant for pre-petition payments to the debtor. *Id.* at 353.

In some settings, even defendants who acted in bad faith have been given a credit under Section 550(d). For example, in *In re Kingsley*, 518 F.3d 874, 878 (11th Cir. 2008), even though there had been a finding of actual fraud, the Eleventh Circuit upheld a ruling that the "recovery of the pre-petition transfers would result in an inequitable windfall to the bankruptcy estate." *Id.* To be sure, this Court has held that the *Sawran* and *Kingsley* line of cases "are not controlling in this District." *Goldman Sachs Execution & Clearing, L.P. v. Official Unsecured Creditors' Committee of Bayou Group*, 758 F. Supp. 2d 222, 228 (S.D.N.Y. 2010). However, the Court also made clear that the arbitration panel found that Goldman Sachs "far from being totally innocent of wrongdoing, failed to engage in the diligent investigation that would have revealed [the] fraud. **This is especially relevant to application of the double recovery theory, which is based on principles of equity that a court (or in this case the arbitration panel) may apply (or not apply) with considerable discretion.**" *Id*. at 229 (emphasis added).

Here, with respect to those Defendants whom the Trustee has conceded are innocent investors, and those Defendants as to whom the Court determines acted in good faith, Sections 550(d) and 105(a) should be applied to reduce Defendants' exposure by the amounts they deposited into their accounts during the Reach-Back Period.[35]

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[35] Additional support for the Replenishment Credit method derives from Bankruptcy Code § 548(d)(2)(B): "a . . . stockbroker . . . that receives a . . . settlement payment, as defined in section 101 or 741 of this title, **takes for value** to the extent of such payment[.]") (emphasis added). If BLMIS receives "value" for deposits made by customers within two years of the filing, it logically follows that the customer gave "value" for that deposit.

The Trustee will no doubt claim that Section 548(d)(2)(B) was designed to protect only institutional creditors, not customers. However, a similar argument was properly rejected in *Katz*, when the Trustee argued that the safe harbor of Section 546(e) should protect only stockbrokers, not customers. This Court, finding no support for that limitation on the face of the statute, declined to "ignore the breadth of the statutory language." 462 B.R. 447, 452 and n. 3 (S.D.N.Y. 2011). Similarly, Madoff Securities customer deposits of new money within the Reach-Back Period unquestionably fit within the broad definition of "settlement payments" that

B. Inter-account transfers to Defendants outside the Reach-Back Period should be treated the same as principal deposits.

The Trustee has taken the position that inter-account transfers from one customer (the "sender") to another customer (the "recipient") consisting of the sender's account balance in excess of principal deposited are not principal in the account of the recipient, regardless of whether such transfers occurred outside the Reach-Back Period. However, to label the funds or account balances transferred by the sender to the recipient as avoidable, the Trustee must first employ "netting" (cash-in/cash-out) as to the sender's account. By doing so for inter-account transfers that occurred outside the Reach-Back Period, the Trustee indirectly avoids transfers that he could not otherwise directly avoid. Transfers by Madoff Securities are not *void*, but are only *voidable* under certain limited circumstances within the boundaries of the avoidance statute. If an inter-account transfer was made outside the Reach-Back Period, the Trustee cannot avoid a subsequent transfer to the recipient. The sender could have withdrawn cash and delivered it to the recipient. The fact that the sender's "withdrawal" took the form of an inter-account transfer does not change the nature of the transaction, nor should it grant the Trustee new powers to avoid the transfer or ignore the Reach-Back Period.[36]

The Trustee's approach is clearly at odds with this Court's prior rulings that the Trustee may not avoid transfers that occurred more than two years before the commencement of these

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were made to Madoff Securities, a "stockbroker." Section 548(d)(2)(B) defines those deposits as being received for value. It would be peculiar if the very same payment – which must be seen as full "value" to the recipient/stockbroker – was ignored as value when asserted as a credit by the depositor/customer against any liability arising during the Reach-Back Period.

[36] Inter-account transfers readily satisfy the definition of "transfer" in Section 101(54) of the Bankruptcy Code as the sender "parts" with an interest in his Madoff account, which constituted "an interest in property" under applicable law at the time of the transfer. *See Simkin v. Blank*, 19 N.Y.3d 46, 54-56 (N.Y. 2012) (transfer of Madoff account as part of property settlement upheld against claim that account had no value at the time of transfer).

cases[37] and it violates the due process rights of Defendants.[38] Because inter-account transfers outside the Reach-Back Period are not subject to avoidance by operation of the statutory limitations on the Trustee's avoidance powers, such inter-account transfers should be considered principal in the recipient's account, and that withdrawals by such customer up to the amount of those inter-account transfers should be deemed for value (*i.e.*, payment of an antecedent debt) under Sections 548(c) and (d)(2)(A).[39]

1. The Trustee's failure to treat inter-account transfers to Defendants outside the Reach-Back Period as principal ignores the statutory Reach-Back Period.

Simply stated, if an account was funded by means of an inter-account transfer between customers that occurred outside the Reach-Back Period: (i) the amount or account balance transferred should be deemed to be (or treated the same as) principal in the account of the recipient; (ii) the recipient should be treated as if he or she made a deposit with Madoff Securities in the amount or account balance transferred; (iii) the recipient should be treated as holding a claim against Madoff Securities in the amount or account balance transferred; and (iv) the recipient's withdrawal of all or any portion of the amount or the account balance

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[37] *See Greiff,* 2012 WL 1505349, at *6; *Picard v. Katz*, 462 B.R. 447, 452 (S.D.N.Y. 2011) ("*Katz*").

[38] The Supreme Court has held that Congress "may authorize the bankruptcy court to affect . . . property rights, provided the limitations of the due process clause of observed." *Wright v. Union Central Life Ins.*, 304 U.S. 502, 518 (1938) (emphasis added).

[39] Defendants seek dismissal of the Avoidance Actions with respect to transfers protected by the inter-account transfer argument herein. Some Defendants intend to further argue that they are, or should be, treated as subsequent transferees under Section 550(b), that particular inter-account transfers were made by wire transfers of cash rather than by book entries, and/or that inter-account transfers were used by customers to settle debts between them. Nothing herein waives any Defendant's right to assert subsequent transferee defenses or to address any particular facts and circumstances in their respective adversary proceedings, all of which are expressly reserved.

transferred to it via inter-account transfer should be deemed for value (as satisfaction of antecedent debt), even if the withdrawal occurred inside the Reach-Back Period.

The Trustee's basic position with respect to inter-account transfers between different customers is that if the funds or account balances transferred from one customer to another included amounts in excess of principal with respect to the sender's account, such funds or account balance will continue to be in excess of principal with respect to the recipient's account. However, a straightforward application of this Court's 546(e) ruling in *Greiff* mandates a different result. Because the Trustee's ability to avoid transfers is limited by the Reach-Back Period, inter-account transfers of any funds or account balances that occur outside the Reach-Back Period should be treated as principal in the account credited to the recipient's account, even if subsequently withdrawn by the recipient inside the Reach-Back Period. The Trustee's argument to the contrary is nothing more than an attempt to ignore the Reach-Back Period.[40]

The reason that an inter-account transfer from one customer to another outside the Reach-Back Period should be treated as a principal deposit by the recipient is demonstrated by the

[40] The cash-in/cash-out calculation that forms the basis for the Trustee's designation of the sender's account balance as avoidable is itself the product of a netting process that ignores the reach back on avoidance. The cash-in/cash-out calculation enables the Trustee to avoid and recover "ancient" transfers (*i.e.*, transfers that pre-date the 2-year Reach-Back Period) by setting off the amount of unavoidable prior withdrawals against the value of subsequent investments. For example, $1 million might have been transferred by a father to a son in 2001 and the Trustee has only credited the son with the net investment of the father, which might have been zero. The use of the foregoing method of calculation to justify an avoidance action against the recipient of an inter-account transfer is highly prejudicial to the recipient because not only should the recipient have repose for inter-account transfers that pre-date the commencement of the 2-year period, but the clawback is based on a retroactive calculation of another customer's ancient history. In other words, the recipient of an inter-account transfer suffers a double whammy: another customer's ancient transfers are being avoided through netting and the implicit avoidance is being used by the Trustee to deprive the recipient of an inter-account transfer of an investment that it made outside the Reach Back Period. The Trustee cannot ignore the applicable Reach-Back Period.

following hypothetical: It is law of the case that any withdrawals by a customer prior to the commencement of the Reach-Back Period are not subject to avoidance. *See Greiff*, 2012 WL 1505349, at *2; *Katz*, 462 B.R. at 452. If this same hypothetical customer ("Customer X") had both withdrawn the funds from his or her account and transferred those funds to a third party ("Customer Y") before the Reach-Back Period (regardless of the reason for the transfer), and Customer Y later deposited those same funds with Madoff Securities, still outside the Reach-Back Period, it is undeniable that the cash on deposit in Customer Y's account would be treated as principal. This follows because any withdrawal of funds by Customer X outside of the Reach-Back Period would be protected from avoidance by Section 546(e). Any principal thereafter withdrawn by Customer Y from its account, even if withdrawn inside the Reach-Back Period, is shielded by operation of Section 548(c) because the withdrawal satisfied an antecedent debt owed by Madoff Securities to Customer Y.

The economic substance of the above two-step transaction is no different than if, outside the two-year Reach-Back Period, Customer X made an inter-account transfer to a Madoff Securities account of Customer Y. The entire balance reflected in Customer X's statement immediately prior to the commencement of the Reach-Back Period was statutorily insulated from avoidance and was readily available for withdrawal by Customer X. That balance should not lose its protection merely because it was transferred to another customer who later withdrew the transferred amounts. Yet, the Trustee seeks to recover funds or account balances from Defendants that originated with another customer and that, at the time the funds or account balances were transferred, were not avoidable due to the passage of time.

There is no authority for such treatment by the Trustee. Like statutes of limitations, reach-back periods are statutes of repose established by legislatures in recognition of the fact that it would be unfair and unreasonable to force a person to litigate a particular issue more than a

certain number of years after the occurrence giving rise to the claim. *See Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 473 (1975) (statute of limitations designed to prevent the unfairness caused by "lost evidence, faded memories, and disappearing witnesses, and to avoid unfair surprise"). By not crediting the transferee for the full value of a transfer made before the Reach-Back Period, the Trustee impairs Defendants' substantive rights. *See Greiff*, 2012 WL 1505349, at *11-12; *Katz*, 462 B.R. at 452.

2. Inter-account transfers established new customer-broker relationships under federal securities law and should be treated as principal.

Defendants also seek credit for initial deposits effectuated through inter-account transfers. This Court has already held that "the 'value' the defendants gave to Madoff Securities'…'is equal to the amount of their investment." *See Picard v. Katz,* 11 Civ. 3605 (JSR), Order at 2 (S.D.N.Y. Mar. 5, 2012) [Dkt. No. 142]. As set out more fully in Section I.A.2., federal securities law clearly provides that the establishment of a discretionary securities account constitutes an investment contract,[41] and that there is no requirement that a party "identify a specific security, or demonstrate that his money was actually invested in securities, to be a purchaser of securities within the meaning of . . . Rule 10b-5."[42] Thus, when Defendants funded their accounts, whether through cash deposits or inter-account transfers, these actions triggered the full protections of the federal securities laws. Defendants therefore provided value in the amount of the inter-account transfers that occurred outside the Reach-Back Period.

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[41] *See*, *e.g.*, *Savino v. E.F. Hutton & Co., Inc.*, 507 F. Supp. 1225, 1239-40 (S.D.N.Y. 1981); *see also* n. 7, *supra*.

[42] *Grippo*, 357 F.3d at 1223; *Gelles v. TDA Indus., Inc.*, 44 F.3d 102, 104 (2d Cir. 1994) (holding that a securities "transaction need not involve cash to constitute a purchase or sale under Rule 10b-5"); *see also* nn. 5 & 6, *supra*.

Significantly, a key question in determining the right of a security holder is whether there has been a change in the nature of the investment relationship. "In determining whether changes in the rights of a security holder involve a purchase or sale, courts must decide whether there has occurred 'such significant change in the nature of the investment . . . as to amount to a new investment.'" *Gelles*, 44 F.3d at 104 (*quoting Abrahamson v. Fleschner*, 568 F.2d 862, 868 (2d Cir. 1978)).

Where, as here, one customer transfers funds or an account balance to another customer's account, a significant change in the underlying relationship between the customer and the broker has taken place. Securities in the sending customer's account are liquidated to cash, and new securities are purchased in the account of the receiving customer.[43] Even in the case of a Ponzi scheme, where securities may not have been purchased, the requisite change has occurred because the identity of the customer changed and, as discussed above, there is no requirement that actual money be invested in securities for there to be a purchase of securities. Thus, when an account transfer takes place between two customers outside the Reach-Back Period, the amount or account balance transferred to the recipient's account should be treated as principal. The sender no longer has a claim or right to payment against the broker with respect to the amount or account balance transferred by it, and the recipient now has the claim or right to payment with respect to the amount or account balance transferred to it.

3. The cases to which Greiff cited are not applicable to inter-account transfers outside the Reach-Back Period.

In *Greiff*, this Court distinguished *Visconsi*, 244 F. App'x at 713-14. *Greiff*, 2012 WL 1505349, at *8. As discussed in Section I.A.4(c), however, *Visconsi* directly supports Defendants' value claims. Further, the bases under which this Court distinguished *Visconsi* in

[43] *See* reservation of rights, *supra* n.39.

Greiff do not apply to inter-account transfers. Unlike in *Visconsi*, where the court found that benefit of the bargain damages were not measurable, the amount of an inter-account transfer is objectively measurable. Thus, Defendants have a claim for the benefit from their bargain in an amount equal to their deposit via an inter-account transfer that occurred outside the Reach-Back Period. While this Court also noted that the *Visconsi* court focused on the "harm suffered" and that Defendants here "have not shown that th[e] harm in any way corresponds to the amounts reflected on customer statements," *id.* at *9, this is not the case for an innocent customer who is not being credited for deposits made through inter-account transfers that occurred outside the Reach-Back Period.[44] For these Defendants, the harm that would be suffered by reason of the compulsory repayment of funds that were deposited outside the Reach-Back Period is directly proportional to the fraud committed on these Defendants.

Had Madoff's fraud not induced these Defendants into accepting inter-account transfers rather than cash, these Defendants would have received unavoidable cash payments from the customer that made the inter-account transfer. By refusing to treat an inter-account transfer in excess of principal as a principal investment by the recipient, the Trustee's complaints effectively elevate form over substance, against which the courts have repeatedly expressed serious caution. *See*, *e.g.*, *Pepper v. Litton*, 308 U.S. 295, 305 (1939) (courts should take measures to insure that "substance will not give way to form" and that "technical considerations

[44] Defendants ask this Court to hold that all deposits by a customer in an account should be treated as principal, regardless of whether the deposit came via cash infusion or inter-account transfer, provided that the inter-account transfer was made by one customer to another customer prior to the commencement of the Reach-Back Period. In other words, in this Section II.B, recipients of inter-account transfers are not asserting a right to payment of anything beyond their principal deposits. However, nothing in this Section II.B is intended to waive or otherwise impair Defendants' rights to the additional claims asserted in Section I.A., *supra*, or to any other claims asserted and rejected by the *Greiff* court (*see* Section III, *infra*).

will not prevent substantial justice from being done"); *Liona Corp. v. PCH Assocs. (In re PCH Assocs.)*, 949 F.2d 585, 597 (2d Cir. 1991) (Courts "may look through form to substance when determining the true nature of a transaction as it relates to the rights of parties against a bankrupt's estate."); *Pan Am Corp. v. Delta Air Lines, Inc.*, 175 B.R. 438, 498 (S.D.N.Y. 1994) (same).

The *Carrozzella* case is similarly inapplicable with respect to inter-account transfers.[45] In *Greiff*, this Court focused on the fact that, unlike in *Carrozzella*, the defendants in those adversary proceedings did not contract for a specific rate of return. *See Greiff*, 2012 WL 1505349, at *9. The Court's focus was on whether those customers had a claim for amounts in excess of principal. However, Defendants whose accounts were funded via inter-account transfers are not seeking credit for returns on investments but, instead, seek credit for the inter-account transfers as initial amounts deposited in the amount of inter-account transfers from other customers that occurred outside the 2-year period.

Nor is *Donell* applicable to this argument. *Donell*, 533 F.3d 762. *Donell* did not involve inter-account transfers from one customer to another. The issue here, as contrasted to *Donell,* is the determination of the correct amount of a brokerage customer's entitlement against the broker rather than calculation of an investor's excess of profits over investment. In addition, unlike the defendant's argument in *Donell*, Defendants are not attempting to establish the provenance of the funds or account balances transferred to them.

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[45] The same is true with respect to the facts in *In re Hedged-Invs. Assocs.*, 84 F.3d 1286, 1290 (10th Cir. 1996), where the court effectively permitted the defendant to retain more than her original investment because some of the "excess" payments were made to her outside the applicable Reach-Back Period. Thus, *Hedged Investments* supports the proposition that the Reach-Back Period should be strictly applied.

Finally, it cannot be argued that recognizing claims in excess of principal (for claims predicated on inter-account transfers) conflicts with SIPA. The recipients of inter-account transfers do have "principal" claims because the opening of a securities account qualifies as a purchase of securities or "new deposit" to the customer's account. Thus, in determining that the satisfaction of claims relating to inter-account transfers that occurred before the Reach-Back Period gave value to Madoff Securities, this Court would not be "choosing between creditors."

III. Defendants Raise and Preserve the Value Arguments This Court Previously Rejected.

Defendants acknowledge that in prior rulings the Court has rejected arguments by other Madoff Securities customers concerning antecedent debt. On their UCC and state contract claims, Defendants respectfully note that, as a matter of New York law, the monthly statements that Madoff Securities sent to them created an enforceable contract claim against the brokerage firm for the value of the investments reflected on the statements. *See* New York Uniform Commercial Code ("N.Y. U.C.C.") Law § 8-501 (McKinney 2012) *et seq.* ("Article 8").[46] *See also Scalp & Blade, Inc. v. Advest, Inc.*, 309 A.D.2d 219, 225 (N.Y. App. Div. 2003) (viable claims against investment advisor/securities broker include cause of action for breach of contract).

These claims further important policies promoting commercial certainty; brokerage customers must be able to rely on the rights established by non-bankruptcy law when they engage in transactions with their broker.[47] As the Second Circuit recently remarked, "certainty

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[46] *See also* N.Y. U.C.C. art 8 at § 8-501(b) & cmt. 2; § 8-501(c).

[47] Most of the investing public do not take delivery of actual securities but rather rely on their brokers or other financial intermediaries to handle that function. New York law reflects that policy. If customers ran the risk that securities shown on their statement were not as represented, they would have to take delivery of the actual securities, substantially impairing the

and predictability are at a premium" in the area of law governing securities transactions. *See Enron Creditors Recovery Corp. v. Alfa, S.A.B. de C.V.*, 651 F.3d 329, 336 (2d Cir. 2011); *Pacific Inv. Mgmt. Co. LLC v. Mayer Brown LLP*, 603 F.3d 144, 157 (2d Cir. 2010) ("securities law is 'an area that demands certainty and predictability.'") (quoting *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 188 (1994)); *see also Pinter v. Dahl*, 486 U.S. 622, 652 (1988) (same). Failure to recognize substantive federal and state law customer claims within the bankruptcy context will disrupt the orderly conduct of business in the securities markets and inject an unnecessary level of uncertainty into commercial affairs. *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 544 (1994) (expressing concern that, if the commencement of bankruptcy case caused the validity of a foreclosure sale to be questioned, "[t]he title of every piece of realty purchased at foreclosure would be under a federally created cloud."); *see also Commodity Futures Trading Comm'n*, 17 N.Y.3d at 173 ("to permit in every case of the payment of a debt an inquiry as to the source from which the debtor derived the money, and a recovery if shown to have been dishonestly acquired, would disorganize all business operations and entail an amount of risk and uncertainty which no enterprise could bear.") (quoting *Banque Worms v. BankAmerica Int'l*, 77 N.Y.2d 362, 372 (1991)).

These claims, and those discussed in Section I.A., are supported by the Supreme Court's decision in *Butner* and its progeny. *See Butner*, 440 U.S. at 54-56; *Travelers,* 549 U.S. at 445; *BFP*, 511 U.S. at 544-45; *see also Barnhill v. Johnson*, 503 U.S. 393, 399-400 (1992); *Bear, Stearns Sec. Corp. v. Gredd*, 275 B.R. 190, 195-98 (S.D.N.Y. 2002). As these cases recognize, the Bankruptcy Code does not override a claimant's substantive claims absent express Congressional intent.

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efficiency of the securities markets.

By way of further explication, Defendants incorporate by reference the following more detailed briefing and supporting declarations previously presented to the Court:[48]

***Picard v. Greiff*, 11-cv-3775 JSR**

Docket Nos.	***Date Filed***	***Documents***	***Pages of Memoranda***
24 & 25	10/06/2011	Customers' Mem. in Support of Motion to Dismiss, and supporting papers	11-16
27	10/12/2011	Response in Support of Motion to Dismiss	All
35 & 37	11/01/2011 & 11/02/2011	Greiff's Reply Mem., and supporting papers	5-12

***Picard v. Blumenthal*, 11-cv-4293 JSR**

Docket Nos.	***Date Filed***	***Documents***	***Pages of Memoranda***
18 & 19	11/14/2011	Defendants' Memorandum of Law in Support of Motion to Dismiss, and supporting papers	11-20
25	12/09/2011	Reply Memorandum of Law in Support of Motion	7-12, 15-16

***Picard v. Hein*, 11-cv-4936 JSR**

Docket Nos.	***Date Filed***	***Documents***	***Pages of Memoranda***
19 & 20	01/04/2012	Defendants' Mem. in Support of Motion to Dismiss, and supporting papers	14-19
41	02/03/2012	Defendants' Mem. in Reply	8-13

***Picard v. Goldman*, 11-cv-4959 JSR**

[48] Defendants reserve the right to incorporate other portions of the papers filed in these cases in response to the arguments that may be made here by the Trustee and SIPC.

Docket Numbers	Date Filed	Documents	Pages of Memoranda
24, 25, 26	01/04/2012 & 01/05/2012	Mem. in Support of Motion to Dismiss, and supporting papers	14-22
49 & 50	02/03/2012	Reply Memorandum and supporting papers	19-25

CONCLUSION

For the foregoing reasons, Defendants request that the Court grant the motion to dismiss the complaints in whole or in part to the extent that Defendants are entitled to a defense based on:

- federal and state law claims against Madoff Securities for interest and, where appropriate, consequential damages in addition to recovery of principal;
- any obligations of Madoff Securities cognizable by state law not avoided or avoidable by the Trustee under Section 548(a)(1), including those occurring outside the applicable Reach-Back Period;
- a credit against any asserted liability for all amounts deposited with Madoff Securities during the Reach-Back Period;
- any inter-account transfer from one customer to another customer if the transfer was made outside the 2 year Reach-Back Period of Section 548(a)(1); and
- contract claims valid under state law against Madoff Securities based on amounts stated in customer brokerage statements.

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RESPECTFULLY SUBMITTED, this 25th day of June 2012

K&L GATES LLP

By: /s/ Richard A. Kirby
Richard A. Kirby
Laura L. Clinton
Martha Rodriguez-Lopez
Catherine A. LaRose

1601 K Street NW
Washington, DC 20006-1600
(202) 778-9000 (Telephone)
Richard.Kirby@klgates.com

BECKER & POLIAKOFF LLP

By: /s/ Helen Davis Chaitman
Helen Davis Chaitman

45 Broadway
New York, NY 10006

FRIEDMAN KAPLAN SEILER & ADELMAN LLP

By: /s/ William P. Weintraub
William P. Weintraub
Kizzy L. Jarashow

7 Times Square
New York, New York 10036-6516

KLEINBERG, KAPLAN, WOLFF & COHEN, P.C.

By: /s/ Matthew J. Gold
David Parker
Matthew J. Gold

551 Fifth Avenue
New York, New York 10176

KUDMAN TRACHTEN ALOE LLP

By: /s/ Paul H. Aloe
Paul H. Aloe
Matthew H. Cohen
Evan S. Cowit

The Empire State Building
350 Fifth Avenue, Suite 4400
New York, New York 10118

LOEB & LOEB LLP

By: /s/ P. Gregory Schwed
Walter H. Curchack
P. Gregory Schwed
Daniel B. Besikof

345 Park Avenue
New York, New York 10154

Of Counsel:

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

Marc E. Kasowitz
Daniel J. Fetterman
David J. Mark
1633 Broadway
New York, New York 10019

KRAMER LEVIN NAFTALIS & FRANKEL LLP

Elise S. Frejka
Jason Rappaport
1177 Avenue of the Americas
New York, New York 10036

PRYOR CASHMAN LLP

Richard Levy, Jr.
7 Times Square
New York, New York 10036-6569

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Michael V. Ciresi
Thomas B. Hatch
Damien A. Riehl
Thomas F. Berndt
800 LaSalle Avenue
2800 LaSalle Plaza
Minneapolis, MN 55402–2015

SNR DENTON US LLP

Carole Neville, Esq.
1221 Avenue of the Americas
New York, NY 10020

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (SMB) SIPA Liquidation (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	

SCHEDULING ORDER

This matter came before the Court on March 27, 2014 on the motion (the "Scheduling Motion")[1] of Irving H. Picard, trustee ("Trustee") for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") and the estate of Bernard L. Madoff ("Madoff") (collectively, "Debtor"), by and through his counsel, for entry of an order to schedule a hearing and a briefing schedule regarding the appropriate methodology for calculating customer claims involving transfers between BLMIS accounts (collectively referred to herein as the "Inter-Account Transfer Issue"), as more fully set forth in the Scheduling Motion (ECF No. 5728); and the Court having jurisdiction to consider the Scheduling Motion and the relief requested therein in accordance with section 78eee(b)(4) of the Securities Investor Protection Act ("SIPA"), 15 U.S.C. § 78aaa, *et seq.*, the Protective Decree entered on December

[1] Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

15, 2008 by the United States District Court for the Southern District of New York in Case No. 08-CV-10791 (LLS), and 28 U.S.C. §§ 157 and 1334, and in accordance with SIPC's application under SIPA, 15 U.S.C. § 78eee(a)(3); and it appearing that the relief requested by the Scheduling Motion is necessary and in the best interests of the estate, its customers, creditors, and all parties-in-interest; and due notice of the Scheduling Motion having been given, and it appearing that no other or further notice need be given; and any objections to the Scheduling Motion have been withdrawn or are hereby overruled; and upon the proceedings before the Court and after due deliberation, it is hereby:

ORDERED, that on or before March 31, 2014, the Trustee shall file a Motion For An Order To Affirm the Trustee's Determinations of Customer Claims Regarding Transfers between BLMIS Accounts, and a corresponding memorandum of law (together, the "Inter-Account Transfer Motion") seeking to affirm the Trustee's determination of claims regarding the application of the Net Investment Method to the determination of customer transfers between BLMIS accounts. The sole purpose of the Inter-Account Transfer Motion shall be to resolve the legal issue raised by objections to the methodology used to calculate the amount transferred between BLMIS accounts in connection with customer claims. The Inter-Account Transfer Motion shall be served on all parties included in the Master Service List as defined in the Order Establishing Notice Procedures (ECF No. 4560). Parties that have not opted to be included in the Master Service List but wish to receive notice shall contact Baker & Hostetler LLP, counsel for the Trustee, 45 Rockefeller Plaza, New York, New York 10111, Attn: Bik Cheema, Esq.; and it is further

ORDERED, that on or before March 31, 2014, SIPC may file a brief with respect to the Inter-Account Transfer Motion. SIPC's brief shall be served on all parties included in the Master

Service List as defined in the Order Establishing Notice Procedures (ECF No. 4560). Parties that have not opted to be included in the Master Service List but wish to receive notice shall contact Baker & Hostetler LLP, counsel for the Trustee, 45 Rockefeller Plaza, New York, New York 10111, Attn: Bik Cheema, Esq.; and it is further

ORDERED, that on or before May 16, 2014, claimants who wish to participate in the briefing on this issue ("Objecting Claimants") shall file a memorandum of law in opposition ("Opposition Briefs") to the Inter-Account Transfer Motion. Objecting Claimants must identify: (i) the claimant's interest in this matter, including, but not limited to, whether the claimant had an account at BLMIS, (ii) the timely-filed customer claim, if applicable, and (iii) the docket numbers of any objections to the Trustee's claim determination, and any other submissions to this Court or any other court related to this liquidation proceeding, if applicable. If any Opposition Briefs raise a factual issue for which the Trustee requires discovery, the Trustee may notify such party and obtain a hearing date(s) at an appropriate time following the hearing on the Inter-Account Transfer Motion to resolve such factual issue(s); and it is further

ORDERED, that the Objecting Claimants are encouraged by the Court, but not required, to choose one lead firm to brief the issue, or to brief particular issues, as may be appropriate; and it is further

ORDERED, that on or before May 23, 2014, any Interested Parties, defined as governmental entities, and specifically including the Securities & Exchange Commission, and the Internal Revenue Service, may file briefs relating to the Inter-Account Transfer Issue. Any such briefs must be served upon (a) Baker & Hostetler LLP, counsel for the Trustee, 45 Rockefeller Plaza, New York, New York 10111, Attn: David J. Sheehan, Esq., and (b) the Securities Investor Protection Corporation, 805 Fifteenth Street, NW, Suite 800, Washington,

DC 20005, Attn: Kevin H. Bell, Esq.; and it is further

ORDERED, that the Trustee may file any reply papers on or before June 6, 2014. Any such briefs must be served upon (a) counsel for Objecting Claimants, and (b) the Securities Investor Protection Corporation, 805 Fifteenth Street, NW, Suite 800, Washington, DC 20005, Attn: Kevin H. Bell, Esq., and (c) any Interested Party filing papers as set forth in paragraph E. of the Scheduling Motion; and it is further

ORDERED, that SIPC may file any reply papers on or before June 6, 2014. Any such briefs must be served upon (a) counsel for Objecting Claimants, and (b) Baker & Hostetler LLP, counsel for the Trustee, 45 Rockefeller Plaza, New York, New York 10111, Attn: David J. Sheehan, Esq., and (c) any Interested Party filing papers as set forth in paragraph E. of the Scheduling Motion; and it is further

ORDERED, that the Court shall hold a hearing on the Inter-Account Transfer Motion on June 19, 2014, at 10:00 a.m., or such other time as the Court determines. The sole purpose of the Inter-Account Transfer Motion shall be to resolve the legal issue raised by objections to the methodology used to calculate the amount transferred between BLMIS accounts in connection with customer claims. Any other issues raised by Objecting Claimants will be resolved in subsequently scheduled hearings; and it is further

ORDERED, that only persons or entities that filed customer claims may participate in the Inter-Account Transfer Motion, except as provided by order of this Court; and it is further

ORDERED, that the Trustee shall prepare a notice that sets forth the date, time, and location of the hearing and apprise the Notice Parties of the relevant legal issues, their ability to file briefs, the deadline for any such filings, and the hearing date. The Trustee shall serve notice by U.S. mail, postage prepaid, email, or by ECF. The Trustee shall also post comparable

information on his web site; and it is further

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

Dated: New York, New York
March 27th, 2014

/s/ STUART M. BERNSTEIN
HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES DISTRICT 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 (SMB) SIPA LIQUIDATION (Substantively consolidated)
AARON BLECKER, et al., Appellants, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1236 (PAE)
DIANA MELTON TRUST, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1151 (PAE)

EDWARD A. ZRAICK, JR., et al., Appellants, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1195 (PAE)
ELLIOT G. SAGOR, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1263 (PAE)
MICHAEL C. MOST, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1223

APPENDIX ON BEHALF OF APPELLEE IRVING H. PICARD, TRUSTEE
VOLUME II OF VII (PAGES T. App. 074 - T. App. 091)

BAKER HOSTETLER LLP
David J. Sheehan
Seanna R. Brown
Amy E. Vanderwal
45 Rockefeller Plaza
14th Floor
New York, NY 10111
Telephone: 212.589.4200

Attorneys for Appellee

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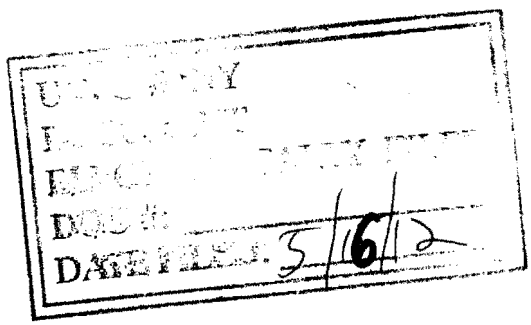
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	12-MC-0115 (JSR) **CONSENT ORDER GRANTING CERTIFICATION PURSUANT TO FED. R. CIV. P. 54(b) FOR ENTRY OF FINAL JUDGMENT DISMISSING CERTAIN CLAIMS AND ACTIONS**
In re: MADOFF SECURITIES	
PERTAINS TO: All actions listed on Exhibits A, B and C.	



JED S. RAKOFF, U.S.D.J.:

WHEREAS:

A. On April 27, 2012 the Court entered an Order (ECF No. 57) dismissing certain claims, as discussed below, of Irving H. Picard (the "Trustee"), in his capacity as the trustee in the liquidation proceedings of Bernard L. Madoff Investment Securities LLC ("Madoff Securities"), under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.*, in the adversary proceedings identified in Exhibit A (the Greiff, Blumenthal, Goldman and Hein groups of actions, collectively, the "Decided Actions"), except for those claims proceeding under Sections 548(a)(1)(A) and 550(a) of the Bankruptcy Code ("Order"). On April 30, 2012, the

Court entered an Opinion and Order (ECF No. 72) explaining the reasons for its decision. Securities Inv. Prot. Corp. v. Bernard L. Madoff Inv. Secs. LLC (In re Madoff Secs.), __ F. Supp. 2d __, 2012 WL 1505349 (S.D.N.Y. Apr. 30, 2012) ("Opinion"). On May ___, 2012 (ECF No. ___), the Court entered a Supplemental Opinion and Order making explicit that Section 546(e) of the Bankruptcy Code applies to the Trustee's claims in the above actions for avoidance and recovery of preferences under Section 547 of the Bankruptcy Code ("Supplemental Opinion"). None of the Trustee's claims in the Decided Actions challenged the good faith of the initial or subsequent transferee(s).

B. The claims dismissed by the Order, Opinion and Supplemental Opinion are those asserted by the Trustee that sought avoidance of: (1) preferences under Section 547 of the Bankruptcy Code; (2) constructive fraudulent transfers under Section 548(a)(1)(B) of the Bankruptcy Code; and (3) actual and constructive fraudulent transfers or fraudulent conveyances under provisions of the New York Debtor & Creditor Law incorporated by Section 544(b) of the Bankruptcy Code (collectively, the "Dismissed Claims").

C. Counsel for the Trustee has advised the Court that the Trustee intends to: (1) appeal to the United States Court of Appeals for the Second Circuit ("Court of Appeals") the Court's dismissal of the Dismissed Claims, and (2) request the entry of final judgment in a limited number of Decided Actions that are fully disposed of by the Order because the complaints or amended complaints therein do not allege any transfers to such defendants that occurred within the two-year period covered by Section 548(a)(1)(A) of the Bankruptcy Code.

D. Counsel for the defendants in the Decided Actions have advised the Court that they wish to seek, and counsel for the Trustee has advised the Court that the Trustee is amenable to, the entry of an order of the Court granting certification for the entry of final judgment

dismissing the Dismissed Claims, pursuant to Fed. R. Civ. P. 54(b), in all of the Decided Actions because there is no just cause for delay in the entry of judgment. Counsel for these defendants further submit that their affected clients will be spared the cost and burden of having to remain as parties to the actions pending further proceedings until the entry of final judgment adjudicating all claims against all defendants in each action.

E. The Trustee also commenced one or more other adversary proceedings, listed on Exhibit B (collectively, the "Withdrawn 546(e) Actions"), in which: (1) the Trustee asserted claims for avoidance and recovery that are substantively identical to the Dismissed Claims, (2) this Court previously entered orders withdrawing the reference and scheduling briefing and argument on a motion to dismiss based on the same issues involving Section 546(e) of the Bankruptcy Code that were decided by the Court in the Order and Opinion; and (3) such briefing and argument was suspended at the direction of the Court pending issuance of the Order and Opinion and the consolidation of certain other matters before the Court for common briefing and argument to the Court.

A. In addition to the Decided Actions and the Withdrawn 546(e) Actions, the Trustee commenced a substantial number of other adversary proceedings, listed on Exhibit C (collectively, excluding the Decided Actions and the Withdrawn 546(e) Actions, the "Eligible Actions"), in which: (1) the Trustee asserted claims for avoidance and recovery that are substantively identical to the Dismissed Claims, and (2) the Court has not yet entered an order determining a motion for withdrawal of the reference.

B. In order to facilitate a coordinated, single appeal from the dismissal of claims in the Decided Actions, the Withdrawn 546(e) Actions and the Eligible Actions: (1) subject to a reservation of rights further set out below, the Trustee and the Securities Investor Protection

Corporation ("SIPC") are amenable to the withdrawal of the reference in any action in which (a) a motion to withdraw the reference has been filed with respect to whether 11 U.S.C. § 546(e) applies, limiting the Trustee's ability to avoid transfers,, but which motion has not yet been determined by the Court, and (b) the Trustee does not challenge the good faith of the initial or subsequent transferee(s); and (2) subject to the inclusion of procedures set out below by which defendants in Eligible Actions may opt-out of the Judgment and, instead, continue to litigate issues related to Section 546(e) of the Bankruptcy Code in this Court under a common briefing procedure to be separately implemented by the Court, the Trustee is amenable and consents to the entry of an order under Rule 54(b) for the entry of final judgment dismissing all of the Trustee's claims therein that are coextensive with the Dismissed Claims in the Decided Actions.

THE COURT THEREFORE FINDS, CONCLUDES AND ORDERS AS FOLLOWS:

A. Withdrawal of Reference In Adversary Proceedings Where No Prior Withdrawal Order Was Entered

1. The reference is deemed withdrawn from the Bankruptcy Court in each of the Eligible Actions for the limited purpose of deciding whether Section 546(e) of the Bankruptcy Code applies, limiting the Trustee's ability to avoid transfers.

B. Certain Reservations of Rights

2. The Trustee and SIPC shall be deemed to have preserved all arguments with respect to the application of Section 546(e) to the Trustee's claims in the Withdrawn 546(e) Actions and the Eligible Actions. The defendants in the Withdrawn 546(e) Actions shall be deemed to have preserved and made all arguments relating to the application and effect of Section 546(e) of the Bankruptcy Code that were raised in the motions to dismiss in the Decided Actions.

3. All objections and arguments that could be raised by the Trustee and/or SIPC to any motion to withdraw the reference, and all defenses and responses that could be raised in opposition to the Trustee and/or SIPC's objections and arguments, are preserved.

C. Rule 54(b) Certification and Interlocutory Appeal

4. The entry of final judgment dismissing the Dismissed Claims ("Rule 54(b) Judgment") in the Decided Actions, the Withdrawn 546(e) Actions and the Eligible Actions pursuant to Fed. R. Civ. P. 54(b) is appropriate. To permit entry of final judgment under Fed. R. Civ. P. 54(b), there must be multiple claims or multiple parties, at least one claim finally decided within the meaning of 28 U.S.C. § 1291, and an express determination that there is no just reason for delay. In re Air Crash at Belle Harbor, N.Y., 490 F.3d 99, 108-09 (2d Cir. 2007).

5. The complaints or amended complaints, as the case may be, filed in the Decided Actions, the Withdrawn 546(e) Actions and the Eligible Actions allege multiple claims. The complaints and amended complaints in those actions assert, among others, claims that seek avoidance of actual fraudulent transfers under Section 548(a)(1)(A) of the Bankruptcy Code, avoidance of constructive fraudulent transfers pursuant to Section 548(a)(1)(B) of the Bankruptcy Code, avoidance of actual *or* constructive fraudulent conveyances pursuant to state avoidance statutes incorporated through Section 544 of the Bankruptcy Code and, in some instances, avoidance of preferences pursuant to Section 547 of the Bankruptcy Code. In addition, many of the complaints and amended complaints filed by the Trustee name multiple defendants.

6. The Rule 54(b) Judgment to be entered will finally decide and ultimately dispose of at least one claim and, in many instances, multiple claims, asserted by the Trustee in each of the Decided Actions and the Withdrawn 546(e) Actions and, to the extent that they do not opt-

out of the Rule 54(b) Judgment pursuant to this Order, the Eligible Actions. *See* Curtiss-Wright Corp. v. General Elec. Co., 446 U.S. 1 (1980). By reason of the Court's determination that Section 546(e) applies to the Dismissed Claims, any counts in each complaint or amended complaint that seeks avoidance of constructive fraudulent transfers pursuant to Section 548(a)(1)(B) of the Bankruptcy Code, avoidance of actual *or* constructive fraudulent conveyances pursuant to state avoidance statutes incorporated through Section 544 of the Bankruptcy Code, and/or avoidance of preferences pursuant to Section 547 of the Bankruptcy Code, are finally determined and dismissed against the Trustee. The Trustee's remaining claims are limited only to those that are proceeding under Sections 548(a)(1)(A) and 550(a) of the Bankruptcy Code ("Remaining Claims"), and such claims would not be dismissed by reason of a judgment dismissing the Dismissed Claims. The Dismissed Claims and the Remaining Claims are separable, *see* Cullen v. Margiotta, 811 F.2d 698, 711 (2d Cir. 1987), and because of the application of Section 546(e) the Remaining Claims by the Trustee can be decided independently of the Dismissed Claims. *See* Ginett v. Computer Task Group, 962 F.2d 1085, 1094 (2d Cir. 1992).

7. There is no just reason for delay in the entry of final judgment dismissing the Dismissed Claims. In light of the number of adversary proceedings, claims and defendants affected by dismissal of the Dismissed Claims pursuant to the Order, the interests of sound judicial administration and the realization of judicial efficiencies are served by the entry of such final judgment and the opportunity for an immediate appeal. *See* Advanced Magnetics, Inc. v. Bayfront Partners, Inc., 106 F.3d 11, 16 (2d Cir. 1997) (entry of judgment on certain claims pursuant to Rule 54(b) avoids potentially expensive and duplicative trials).

8. Because the Rule 54(b) Judgment and the dismissal of the Dismissed Claims affect hundreds of adversary proceedings commenced by the Trustee and hundreds of defendants named in those complaints or amended complaints, an immediate appeal would avoid protracted, expensive and potentially duplicative litigation proceedings, and will facilitate the prompt resolution of the case, thereby providing certainty and helping to streamline the litigation for further proceedings and possible appeals. *E.g.*, Consolidated Edison, Inc. v. Northeast Util., 318 F. Supp. 2d 181, 196-97 (S.D.N.Y. 2004); Kramer v. Lockwood Pension Servs., Inc., 653 F. Supp. 2d 354, 397-98 (S.D.N.Y. 2009) (interlocutory appeal appropriate to consider a case of unusual significance "going well beyond run-of-the-mill concerns of parties"); Brown v. Bullock, 294 F.2d 415, 417 (2d Cir. 1961) (Friendly, J.) (interlocutory appeal appropriate where the "determination was likely to have precedential value for a large number of other suits" pending in the District Court).

D. Procedures Relating to the Consolidated Entry of Judgment and the Commencement of An Appeal

9. The Eligible Actions, Withdrawn 546(e) Actions, and Decided Actions are consolidated under the action captioned Picard v. Ida Fishman Revocable Trust, No. 11-cv-7603 (JSR) (S.D.N.Y.) (the "Fishman Action"), but solely with respect to and for the purposes of entry of judgment on the Dismissed Claims, and not with respect to the Trustee's claims proceeding under Sections 548(a)(1)(A) and 550(a) of the Bankruptcy Code. The Court will administer the consolidated proceedings under the following caption:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiff,

v.

IDA FISHMAN REVOCABLE TRUST, *et al.*,

Defendants.

Consolidated Case No. 11-cv-7603 (JSR)

ECF Case

10. A single Rule 54(b) judgment shall be entered in the Fishman Action, which (subject to the opt-out procedures set out below) shall govern all of the Decided Actions, the Withdrawn 546(e) Actions and the Eligible Actions. The Rule 54(b) judgment shall be entered only in the Fishman Action.

11. Counsel for the Trustee, SIPC and the lead counsel in the Decided Actions and the Withdrawn 546(e) Actions shall submit an agreed form of the proposed Rule 54(b) Judgment not later than May 21, 2012. If the parties cannot agree on the form of such judgment, each of the Trustee and SIPC, on one hand, and the group of lead counsel for the Decided Actions and the Withdrawn 546(e) Actions, on the other hand, may submit a proposed form of judgment and the Court will consider and determine the form of Rule 54(b) Judgment to be entered.

12. Any appeal from the Rule 54(b) Judgment that the Trustee and/or SIPC may be entitled to file will be taken only from the judgment entered in the Fishman Action. Subject to the opt-out procedures below, the Rule 54(b) Judgment and the Trustee's notice of appeal shall be deemed entered in all of the Eligible Actions, the Decided Actions and the Withdrawn 546(e) Actions, without further notice or action. Notwithstanding the foregoing, the Trustee and SIPC shall not be prevented from filing additional separate notices of appeal in any of the Decided

Actions, the Withdrawn 546(e) Actions or the Eligible Actions if the Trustee and SIPC determine the need to do so to preserve the right to appeal. There will be no right of cross-appeal as to any of the Rule 54(b) judgments entered in the Fishman Action or in any other action in which the Trustee determines to file a notice of appeal, so as to limit the number and scope of appellate proceedings.

13. Neither the Trustee nor SIPC shall file any notice of appeal until the expiration of the opt-out period set forth in Paragraph 14 below.

14. Any defendant in an Eligible Action or a Withdrawn 546(e) Action shall be entitled to opt-out of the procedures established by this Order and to continue to litigate issues related to Section 546(e) in this Court pursuant to a common briefing schedule and procedure to be separately implemented by the Court. The defendant may opt-out by notifying the Trustee in writing that such defendant does not consent to the entry of a Rule 54(b) Judgment. To be effective and binding, such written election must be received by the Trustee and filed with the District Court in the docket of the Fishman Action not later than fourteen (14) days after the date of entry of this Order. For all other purposes, common briefing on Section 546(e) issues will proceed before the District Court pursuant to a separate order of the Court. The defendants in Eligible Actions and Withdrawn 546(e) Actions that do not elect to opt-out under this paragraph shall be deemed to have preserved and made all arguments relating to the application and effect

of Section 546(e) of the Bankruptcy Code that were raised in the motions to dismiss in the Decided Actions.

SO ORDERED.

Dated: New York, New York
May 23, 2012

JED S. RAKOFF, U.S.D.J.

EXHIBIT A

1.	***Picard v. James Greiff***	11-03775	Becker & Poliakoff LLP Helen Davis Chaitman hchaitman@becker-poliakoff.com
2.	***Picard v. Gerald Blumenthal***	11-04293	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
3.	***Picard v. Gary Albert, individually and his capacity as shareholder of Impact Designs Ltd.***	11-04390	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
4.	***Picard v. Aspen Fine Arts Co.***	11-04391	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
5.	***Picard v. The Aspen Company and Harold Thau***	11-04400	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
6.	***Picard v. Jan Marcus Capper***	11-04389	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
7.	***Picard v. Norton Eisenberg***	11-04388	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
8.	***Picard v. P. Charles Gabriele***	11-04481	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
9.	***Picard v. Stephen R. Goldenberg***	11-04483	Milberg LLP Jennifer L. Young (jyoung@milberg.com
10.	***Picard v. Ruth E. Goldstein***	11-04371	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
11.	***Picard v. Harnick Bros. Partnership and Gary Harnick individually and as general partners of The Harnick Brothers Partnership***	11-04729	Milberg LLP Jennifer L. Young (jyoung@milberg.com) Becker & Poliakoff LLP Helen Davis Chaitman hchaitman@becker-poliakoff.com

12.	***Picard v. John Denver Concerts, Inc. Pension Plan Trust and Harold Thau as the Trustee***	11-04387	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
13.	***Picard v. Anita Karimian***	11-04368	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
14.	***Picard v. Lester Kolodny***	11-04502	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
15.	***Picard v. Laurence Leif***	11-04392	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
16.	***Picard v. Steven V. Marcus Separate Property of the Marcus Family Trust; The Marcus Family Limited Partnership; Steven V. Marcus, individually and in his capacity as Trustee of the Steven V. Marcus Separate Property of the Marcus Family Trust, General Partner of the Marcus Family Limited Partnership and Guardian of O.M., K.M. and H.M.; and Denise C. Marcus, in her capacity as Trustee of the Steven .V Marcus Separate Property of the Marcus Family Trust***	11-04504	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
17.	***Picard v. Trust U/W/O Harriette Myers***	11-04397	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
18.	***Picard v. Robert Potamkin and Alan Potamkin***	11-04401	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
19.	***Picard v. Potamkin Family Foundation, Inc.***	11-04398	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
20.	***Picard v. Delia Gail Rosenberg and Estate of Ira S. Rosenberg***	11-04482	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
21.	***Picard v. Miriam Ross***	11-04480	Milberg LLP Jennifer L. Young (jyoung@milberg.com)

22.	***Picard v. Leon Ross***	11-04479	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
23.	***Picard v. Richard Roth***	11-04501	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
24.	***Picard v. Harold A. Thau***	11-04399	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
25.	***Picard v. William M. Woessner Family Trust, Sheila A. Woessner Family Trust, William M. Woessner individually, and as Trustee of the William M. Woessner Family Trust and the Sheila A. Woessner Family Trust, Sheila A. Woessner, individually, and Trustee of the William M. Woessner Family Trust and the Sheila A. Woessner Family Trust***	11-04503	Milberg LLP Jennifer L. Young (jyoung@milberg.com)
26.	***Picard v. Elbert R. Brown, et al.***	11-05155	Seeger Weiss LLP Parvin K. Aminolroaya (paminolroaya@seegerweiss.com)
27.	***Picard v. Lewis Franck individually and in his capacity as Trustee for the Florence Law Irrevocable Trust dtd 1/24/05, et al.***	11-04723	Seeger Weiss LLP Parvin K. Aminolroaya (paminolroaya@seegerweiss.com)
28.	***Picard v. Joseph S. Popkin Revocable Trust DTD 2/9/2006 a Florida trust, Estate of Joseph S. Popkin, Robin Popkin Logue as trustee of the Joseph S. Popkin Revocable Trust Dated Feb. 9, 2006, as the personal representative of the Estate of Joseph S. Popkin, and as an individual***	11-04726	Seeger Weiss LLP Parvin K. Aminolroaya (paminolroaya@seegerweiss.com)
29.	***Picard v. Jonathan Sobin***	11-04728	Seeger Weiss LLP Parvin K. Aminolroaya (paminolroaya@seegerweiss.com)
30.	***Picard v. Kara Fishbein Goldman, et al.***	11-04959	Pryor Cashman LLP Richard Levy, Jr. (rlevy@pryorcashman.com)
31.	***Picard v. Patrice M. Auld, Merritt Kevin Auld, and James P. Marden***	11-05005	Pryor Cashman LLP Richard Levy, Jr. (rlevy@pryorcashman.com)

32.	***Picard v. Boslow Family Limited Partnership et al.***	11-05006	Pryor Cashman LLP Richard Levy, Jr. (rlevy@pryorcashman.com)
33.	***Picard v. Bernard Marden Profit Sharing Plan et al.***	11-05007	Pryor Cashman LLP Richard Levy, Jr. (rlevy@pryorcashman.com)
34.	***Picard v. Helene R. Cahners Kaplan et al.***	11-05008	Pryor Cashman LLP Richard Levy, Jr. (rlevy@pryorcashman.com)
35.	***Picard v. Charlotte M. Marden et al.***	11-05009	Pryor Cashman LLP Richard Levy, Jr. (rlevy@pryorcashman.com)
36.	***Picard v. Robert Fried and Joanne Fried***	11-05156	Pryor Cashman LLP Richard Levy, Jr. (rlevy@pryorcashman.com)
37.	***Picard v. Jordan H. Kart Revocable Trust & Jordan H. Kart***	11-05157	Pryor Cashman LLP Richard Levy, Jr. (rlevy@pryorcashman.com)
38.	***Picard v. James P. Marden et al.***	11-05158	Pryor Cashman LLP Richard Levy, Jr. (rlevy@pryorcashman.com)
39.	***Picard v. Marden Family Limited Partnership et al.***	11-05160	Pryor Cashman LLP Richard Levy, Jr. (rlevy@pryorcashman.com)
40.	***Picard v. Norma Fishbein***	11-05161	Pryor Cashman LLP Richard Levy, Jr. (rlevy@pryorcashman.com)
41.	***Picard v. Norma Fishbein Revocable Trust et al.***	11-05162	Pryor Cashman LLP Richard Levy, Jr. (rlevy@pryorcashman.com)
42.	***Picard v. Oakdale Foundation Inc. et al.***	11-05163	Pryor Cashman LLP Richard Levy, Jr. (rlevy@pryorcashman.com)
43.	***Picard v. Bruce D. Pergament et al.***	11-05216	Pryor Cashman LLP Richard Levy, Jr. (rlevy@pryorcashman.com)
44.	***Picard v. Sharon A. Raddock***	11-05217	Pryor Cashman LLP Richard Levy, Jr.

			(rlevy@pryorcashman.com)
45.	***Picard v. The Murray & Irene Pergament Foundation, Inc. et al.***	11-05218	Pryor Cashman LLP Richard Levy, Jr. (rlevy@pryorcashman.com)
46.	***Picard v. David S. Wallenstein***	11-05219	Pryor Cashman LLP Richard Levy, Jr. (rlevy@pryorcashman.com)
47.	***Picard v. Avram J. Goldberg et al.***	11-05220	Pryor Cashman LLP Richard Levy, Jr. (rlevy@pryorcashman.com)
48.	***Picard v. Pergament Equities, LLC et al.***	11-05221	Pryor Cashman LLP Richard Levy, Jr. (rlevy@pryorcashman.com)
49.	***Picard v. Wallenstein/NY Partnership & David S. Wallenstein***	11-05222	Pryor Cashman LLP Richard Levy, Jr. (rlevy@pryorcashman.com)
50.	***Picard v. Bell Ventures Limited et al.***	11-05507	Jacobs Partners LLC Mark Jacobs (mark.jacobs@jacobs-partners.com)
51.	***Picard v. Harold J. Hein***	11-04936	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
52.	***Picard v. Kelman Partners Limited Partnership et al.***	11-05513	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
53.	***Picard v. Barbara J. Berdon***	11-07684	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
54.	***Picard v. Laura E. Guggenheimer Cole***	11-07670	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
55.	***Picard v. Sidney Cole***	11-07669	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
56.	***Picard v. Epic Ventures, LLC & Eric P. Stein***	11-07681	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)

57.	***Picard v. Ida Fishman Revocable Trust et al.***	11-07603	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
58.	***Picard v. The Frederica Ripley French Revocable Trust et al.***	11-07622	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
59.	***Picard v. Alvin Gindel Revocable Trust & Alvin Gindel***	11-07645	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
60.	***Picard v. Rose Gindel Trust et al.***	11-07601	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
61.	***Picard v. S&L Partnership et al.***	11-07600	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
62.	***Picard v. Joel I. Gordon Revocable Trust & Joel I. Gordon***	11-07623	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
63.	***Picard v. Toby T. Hobish et al.***	11-07559	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
64.	***Picard v. Helene Cummings Karp Annuity & Helene Cummins Karp***	11-07646	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
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67.	***Picard v. David R. Markin, et al.***	11-07602	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
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69.	***Picard v. The Murray Family Trust et al.***	11-07683	SNR Denton US LLP Carole Neville

			(carole.neville@snrdenton.com)
70.	***Picard v. Estate of Marjorie K. Osterman et al.***	11-07626	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
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72.	***Picard v. Eugene J. Ribakoff 2006 Trus et al.***	11-07644	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
73.	***Picard v. Sage Associates et al.***	11-07682	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
74.	***Picard v. Sage Realty et al.***	11-07668	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
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76.	***Picard v. Estate of Jack Shurman et al.***	11-07625	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
77.	***Picard v. Barry Weisfeld***	11-07647	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
78.	***Picard v. Marital Trust Under Article X of the Charles D. Kelman Revocable Trust***	11-04936	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com) Proskauer Rose LLP Sheldon I. Hirshon (shirshon@proskauer.com)

EXHIBIT B

1.	***Picard v. Elins Family Trust, et al.***	11-cv-04772-JSR	Kleinberg, Kaplan, Wolff & Cohen P.C. Matthew J. Gold (mgold@kkwc.com) David Parker (dparker@kkwc.com)
2.	***Picard v. Malibu Trading & Investing LP, et al.***	11-cv-07730-JSR	Kleinberg, Kaplan, Wolff & Cohen P.C. Matthew J. Gold (mgold@kkwc.com) David Parker (dparker@kkwc.com)
3.	***Picard v. Kenneth Hubbard***	11-cv-07731-JSR	Kleinberg, Kaplan, Wolff & Cohen P.C. Matthew J. Gold (mgold@kkwc.com) David Parker (dparker@kkwc.com)
4.	***Picard v. Uri & Myna Herscher Family Trust, et al.***	11-cv-07732-JSR	Kleinberg, Kaplan, Wolff & Cohen P.C. Matthew J. Gold (mgold@kkwc.com) David Parker (dparker@kkwc.com)
5.	***Picard v. Lawrence Elins***	11-cv-07733-JSR	Kleinberg, Kaplan, Wolff & Cohen P.C. Matthew J. Gold (mgold@kkwc.com) David Parker (dparker@kkwc.com)
6.	***Picard v. M & B Weiss Family Limited Partnership of 1996 c/o Melvyn I. Weiss, et al.***	11-cv-06244-JSR	Seeger Weiss LLP Parvin K. Aminolroaya (paminolroaya@seegerweiss.com) Gibbons P.C. Michael Griffinger (griffinger@gibbonslaw.com) Jonathan Liss (Jliss@gibbonslaw.com)

UNITED STATES DISTRICT 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 (SMB) SIPA LIQUIDATION (Substantively consolidated)
AARON BLECKER, et al., Appellants, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1236 (PAE)
DIANA MELTON TRUST, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1151 (PAE)

EDWARD A. ZRAICK, JR., et al., Appellants, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1195 (PAE)
ELLIOT G. SAGOR, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1263 (PAE)
MICHAEL C. MOST, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1223

APPENDIX ON BEHALF OF APPELLEE IRVING H. PICARD, TRUSTEE
VOLUME III OF VII (PAGES T. App. 092 - T. App. 110)

BAKER HOSTETLER LLP
David J. Sheehan
Seanna R. Brown
Amy E. Vanderwal
45 Rockefeller Plaza
14th Floor
New York, NY 10111
Telephone: 212.589.4200

Attorneys for Appellee

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2.	***Picard v. Laurel Kohl and Jodi Kohl***	District Court Action No. Unassigned	Okin, Hollander & DeLuca LLP Paul S. Hollander (phollander@ohdlaw.com) Gregory S. Kinoian (gkinoian@ohdlaw.com)
3.	***Picard v. Srione, LLC, et al.***	District Court Action No. Unassigned	Law Offices of Stephen Goldstein Stephen Goldstein (Sgoldlaw@gmail.com)
4.	***Picard v. Turbo Investors, LLC***	District Court Action No. Unassigned	Halperin Battaglia Raicht, LLP; The Gordon Law Firm LLP Alan D. Halperin (ahalperin@halperinlaw.net) Scott A. Ziluck (sziluck@halperinlaw.net) Neal W. Cohen (ncohen@halperinlaw.net)
5.	***Picard vs. Gail Nessel***	District Court Action No. Unassigned	Halperin Battaglia Raicht, LLP Alan D. Halperin (ahalperin@halperinlaw.net) Scott A. Ziluck (sziluck@halperinlaw.net) Neal W. Cohen (ncohen@halperinlaw.net)
6.	***Picard v. Estate of Maurice U. Rosenfield A/K/A Maurice Rosenfield*** (Jay Rosenfeld – Moving Party)	District Court Action No. Unassigned	J.L. Saffer P.C. Jennifer L. Saffer jlsaffer@jlsaffer.com

7.	***Picard v. Bennett M. Berman Trust et al.***[1]	District Court Action No. Unassigned	Proskauer Rose Richard L. Spinogatti (rspinogatti@proskauer.com)
8.	***Picard v. Triangle Diversified Investments, et al***	11-cv-00700-JSR	Dickstein Shapiro LLP Eric Fisher (fishere@dicksteinshapiro.com) Stefanie Birbrower Greer (greers@dicksteinshapiro.com
9.	***Picard v. Franitza Family Ltd. P'ship et al.***	11-cv-04505-JSR	Bernfeld, DeMatteo & Bernfeld LLP Jeffrey L. Bernfeld (jeffreybernfeld@bernfeld-dematteo.com)
10.	***Picard v. The Jordan H. Kart Revocable Trust, et al***	11-cv-05157 (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
11.	***Picard v. Danville Mfg., Inc.***	11-cv-06573-JSR	Kachroo Legal Services P.C. Gaytri D. Kachroo (gkachroo@kachroolegal.com)
12.	***Picard v. Con. Gen. Life Ins., et al.***	11-cv-07174-JSR	Kirkland & Ellis LLP Joseph Serino, Jr. (joseph.serino@kirkland.com) David S. Flugman (david.flugman@kirkland.com)
13.	***Picard v. Con. Gen. Life Ins., et al.***	11-cv-07176-JSR	Kirkland & Ellis LLP Joseph Serino, Jr. (joseph.serino@kirkland.com) David S. Flugman (david.flugman@kirkland.com)
14.	***Picard v. David Abel*** **[Amended Motion of**	11-cv-07766-JSR	Becker & Poliakoff LLP Helen Davis Chaitman

[1] Moving defendants are Helaine Berman Fisher, individually, in her capacity as Trustee of the Bennett M. Berman Trust, in her capacity as Trustee of the Jordan Finnegan Trust, and in her capacity as personal representative of the Estate of Bennett M. Berman, Jordan Finnegan, Trust Created For the Benefit of Jordan Finnegan Under Section 6.1 of the Bennett M. Berman Trust Dated May 9, 2003, and Justin Finnegan

	Withdraw]		(Hchaitman@beckerny.com)
15.	***Picard v. Sirotkin***	11-cv-07928-JSR (Joined *Picard v. Abel* 11-cv-07766) (LILY)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
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19.	***Picard v. Herbert Barbanel and Alice Barbanel***	11-cv-07932-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
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			(Hchaitman@beckerny.com)
26.	***Picard v. Trust U/W/O Morris Weintraub FBO Audrey Weintraub et al***	11-cv-07966-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
27.	***Picard v. Judith Rechler***	11-cv-07967-JSR (Joined *Picard v. Abel*11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
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60.	***Picard v. Estate of Irene Schwartz et al***	11-cv-08049-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)

61.	***Picard v. Edwin Michalove***	11-cv-08050-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
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67.	***Picard v. Leslie Ehrlich et ak***	11-cv-08085-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
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71.	***Picard v. Andelman***	11-cv-08089-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
72.	***Picard v. Robert S. Savin***	11-cv-08090-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)

73.	***Picard v. Train Klan et al***	11-cv-08096-JSR (Joined *Picard v. Abel*11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
74.	***Picard v. Harry Smith Revocable Living Trust et al***	11-cv-08097-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
75.	***Picard v. Allen Gordon***	11-cv-08098-JSR (Joined v 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
76.	***Picard v. Susan Andelman***	11-cv-08099-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
77.	***Picard v. Sylvan Associates LLC F/K/A Sylvan Associates Limited Partnership et al***	11-cv-08100-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
78.	***Picard v. James M. New Trust et al***	11-cv-08101-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
79.	***Picard v. Guiducci Family Limited Partnership et al***	11-cv-08102-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
80.	***Picard v. Melvin H. and Leona Gale Joint Revocable Living Trust et al***	11-cv-08103-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
81.	***Picard v. Trust u/art fourth o/w/o Israel Wilenitz et al***	11-cv-08104 –JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
82.	***Picard v. Frieda Freshman et al***	11-cv-08105-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
83.	***Picard v. Barbara L. Savin***	11-cv-08106-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
84.	***Picard v. Marilyn Turk Revocable Trust et al***	11-cv-08107-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)

85.	***Picard v. Brevo Realty Corp. Defined Benefit Pension Plan et al***	11-cv-08108-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
86.	***Picard v. The Celeste & Adam Bartos Charitable Trust and Adam P. Bartos***	11-cv-08109-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
87.	***Picard v. James M. Goodman and Audrey M. Goodman***	11-cv-08110-JSR (Joined *Picard v. Abel*11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
88.	***Picard v. Robert C. Luker Family Partnership et al***	11-cv-08111-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
89.	***Picard v. Stony Brook Foundation, Inc.***	11-cv-08113-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
90.	***Picard v. Leonard J. Oguss Trust et al***	11-cv-08114-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
91.	***Picard v. Theresa R. Ryan***	11-cv-08115-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
92.	***Picard v. Atwood Management Profit Sharing Plan & Trust f/k/a Atwood Regency Money Purchase Pension Plan, et al***	11-cv-08116-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
93.	***Picard v. Bert Brodsky Associates, Inc. Pension Plan et al***	11-cv-08216-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
94.	***Picard v. Plafsky Family LLC Retirement Plan et al***	11-cv-08217-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
95.	***Picard v. Palmer Family Trust; Great Western Bank – Trust Department et al***	11-cv-08218-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)

96.	***Picard v. Steven C. Schupak***	11-cv-08219-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
97.	***Picard v. Laura Ann Smith Revocable Living Trust et al***	11-cv-08220-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
98.	***Picard v. The Lazarus-Schy Family Partnership et al***	11-cv-08221-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
99.	***Picard v. Irene Whitman 1990 Trust et al***	11-cv-08224-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
100.	***Picard v. Ronald A. Guttman and Irene T. Cheng***	11-cv-08225-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
101.	***Picard v. Reckson Generation et al***	11-cv-08226-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
102.	***Picard v. Boyer H. Palmer et al***	11-cv-08227-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
103.	***Picard v. JABA Associates LP et al***	11-cv-08228-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
104.	***Picard v. David Shapiro Nominee 4***	11-cv-08264-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
105.	***Picard v. Robert Yaffe***	11-cv-08265-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
106.	***Picard v. Shirley Friedman and Richard Friedman***	11-cv-08266-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
107.	***Picard v. Manuel O. Jaffe***	11-cv-08267-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)

108.	***Picard v. Allen Meisels***	11-cv-08268-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
109.	***Picard v. Lehrer et al (moving party Eunice Chevron Lehrer)***	11-cv-08269-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
110.	***Picard v. Ilene May et al***	11-cv-08270-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
111.	***Picard v. Schaffer***	11-cv-08272-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
112.	***Picard v. Realty Negotiators Defined Benefit Pension Plan***	11-cv-08273-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
113.	***Picard v. Brad Wechsler***	11-cv-08274-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
114.	***Picard v. Judd Robbins***	11-cv-08275-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
115.	***Picard v. Alvin E. Shulman***	11-cv-08277-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
116.	***Picard v. Alvin E. Shulman Pourover Trust et al***	11-cv-08278-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
117.	***Picard v. Russell L. Dusek***	11-cv-08279-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
118.	***Picard v. David Gross and Irma Gross***	11-cv-08280-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
119.	***Picard v. Bruno L. DiGiulian***	11-cv-08281-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)

120.	***Picard v. James M. Goodman***	11-cv-08282-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
121.	***Picard v. Allen Gordon***	11-cv-08283-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
122.	***Picard v. Boyer Palmer***	11-cv-08284-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
123.	***Picard v. Denis M. Castelli***	11-cv-08334-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
124.	***Picard v. Carolyn Jean Benjamin et al***	11-cv-08335-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
125.	***Picard v. Martin Harnick et al***	11-cv-08336-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
126.	***Picard v. Richard G. Eaton***	11-cv-08337-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
127.	***Picard v. Gunther K. Unflat***	11-cv-08338-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
128.	***Picard v. Blue Bell Lumber and Moulding Company, Inc. Profit Sharing Plan***	11-cv-08408-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
129.	***Picard v. S&P Associates*** (moving party Rosemary Leo-Sullivan, General Partner)	11-cv-08409-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
130.	***Picard v. Barbara Roth and Mark Roth***	11-cv-08410-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
131.	***Picard v. Nancy Dver Cohen, In Her Capacity As Trustee For The Bert Margolies***	11-cv-08411-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)

	Trust and Bert Margolies Trust		
132.	***Picard v. Ambassador Shoe Corporation***	11-cv-08474 -JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
133.	***Picard v. Fred A. Daibes Madoff Securities Trust***	11-cv-08475-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
134.	***Picard v. Arthur M. Siskind***	11-cv-08476-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
135.	***Picard v. Lillian Berman Goldfarb***	11-cv-08477-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
136.	***Picard v. Estate of Helene Abraham, et al***	11-cv-08478-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
137.	***Picard v. Richard A. Broms Revocable Trust, et al***	11-cv-08479-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
138.	***Picard v. Carol Nelson and Stanley Nelson***	11-cv-08480-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley

		(Bankr)	(pbentley@kramerlevin.com)
139.	***Picard v. Lyle Berman et al***	11-cv-08481-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
140.	***Picard v. Estate of Robert Rimsky, et al***	11-cv-08482-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
141.	***Picard v. Robert A. Meister***	11-cv-08483-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
142.	***Picard v. Theresa Berman Revocable Trust, et al***	11-cv-08484-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
143.	***Picard v. The Olesky Survivors Trust dated 2/27/84 and Cynthia Olesky Giammarrusco***	11-cv-08485-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
144.	***Picard v. Malcolm Sherman***	11-cv-08486-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
145.	***Picard v. Agas Company L.P., et al***	11-cv-08487-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley

		(Bankr)	(pbentley@kramerlevin.com)
146.	***Picard v. AHT Partners, LP, et al***	11-cv-08488-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
147.	***Picard v. BWA Ambassador, Inc., et al***	11-cv-08489-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
148.	***Picard v. Bernard Greenman Marital Deduction Trust, et al***	11-cv-08490;-JSR Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
149.	***Picard v. Goldstein***	11-cv-08491-JSR	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
150.	***Picard v. Indian Wells Partnership, LTD., a Florida limited partnership, et al***	11-cv-08492-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
151.	***Picard v. Rubin Family Investments Partnership, et al***	11-cv-08493-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
152.	***Picard v. Elaine Pikulik***	11-cv-08532-JSR	Rubinstein & Corozzo LLP Ronald Rubinstein (rcorozzo1@gmail.com)

153.	***Picard v. Bonnie J. Kansler***	11-cv-08533-JSR	Lax & Neville LLP (blax@laxneville) Brian J. Neville (bneville@laxneville) Gabrielle Pretto (gpretto@laxneville)
154.	***Picard v. Geoffrey S. Rehnert***	11-cv-08574-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
155.	***Picard v. The Estate of Meyer Goldman (Neil S. Goldman – Moving Party)***	11-cv-08575-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
156.	***Picard v. Karen Siff Exkorn***	11-cv-08576-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
157.	***Picard v. Collingwood Group, et al***	11-cv-08577-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
158.	***Picard v. Shirley S. Siff Trust 1989 DTD 12/20/89, et al***	11-cv-08578-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
159.	***Picard v. Marc B. Wolpow 1995 Family Trust, et al***	11-cv-08579-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)

160.	***Picard v. Audax Group LP, et al***	11-cv-08580-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
161.	***Picard v. Carol Nelson***	11-cv-08581-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
162.	***Picard v. Gordon Associates and Bruce Gordon***	11-cv-08582-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
163.	***Picard v. Robert M. Siff***	11-cv-08583-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
164.	***Picard v. Estate of Maurice U. Rosenfield A/K/A Maurice Rosenfield et al. (moving party Robert Rosenfield)***	11-cv-08584-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
165.	***Picard v. Kenneth Evenstad Revocable Trust u/a/d May 2, 2000, et al (Bankr. Dkt #10-04342)***	11-cv-08668-JSR	Loeb & Loeb LLP Daniel B. Besikof (dbesikof@loeb.com)
166.	***Picard v. Lawrence A. Siff***	11-cv-08585-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
167.	***Picard v. Kay Morrissey***	11-cv-08586-JSR; Moved to join *Picard v.*	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka

		Goldstein MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	(efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
168.	***Picard v. Ludmilla Goldberg***	11-cv-08587-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
169.	***Picard v. Ninth Street Partners, Ltd., et al***	11-cv-08588-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
170.	***Picard v. James Morrissey***	11-cv-08589-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
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UNITED STATES DISTRICT 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 (SMB) SIPA LIQUIDATION (Substantively consolidated)
AARON BLECKER, et al., Appellants, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1236 (PAE)
DIANA MELTON TRUST, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1151 (PAE)

EDWARD A. ZRAICK, JR., et al., Appellants, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1195 (PAE)
ELLIOT G. SAGOR, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1263 (PAE)
MICHAEL C. MOST, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1223

APPENDIX ON BEHALF OF APPELLEE IRVING H. PICARD, TRUSTEE
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BAKER HOSTETLER LLP
David J. Sheehan
Seanna R. Brown
Amy E. Vanderwal
45 Rockefeller Plaza
14th Floor
New York, NY 10111
Telephone: 212.589.4200

Attorneys for Appellee

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		(Bankr)	(pbentley@kramerlevin.com)
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			(dglosband@goodwinprocter.com) Larkin M. Morton (lmorton@goodwinprocter.com) Christopher Newcomb (cnewcomb@goodwinprocter.com) Covington & Burling LLP Dianne Coffino (dcoffino@cov.com) Alan Vinegrad (avinegrad@cov.com)
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	Stephen N. Dratch)		
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			Firm LLP Alan D. Halperin (ahalperin@halperinlaw.net) Scott A. Ziluck (sziluck@halperinlaw.net) Neal W. Cohen (ncohen@halperinlaw.net) Warner & Scheuerman Jonathan D. Warner jdwarner@warnerandscheuennan.com
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213.	***Picard v. Joseph M. Paresky Trust, et al***	11-cv-08969 -JSR	Goulston & Storrs, P.C. Richard J. Rosensweig (rrosensweig@goulstonstorrs.com) Peter D. Bilowz (pbilowz@goulstonstorrs.com)
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			Thomas B. Hatch (tbhatch@rkmc.com) Damien A. Riehl (dariehl@rkmc.com) Jones & Schwartz P.C Harold Jones (hjones@jonesschwartz.com)
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			(mbrosterman@stroock.com) Danielle Alfonzo Walsman (dwalsman@stroock.com) Christopher Guhin Michele L. Pahmer (mpahmer@stroock.com)
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			(dbesikof@loeb.com)
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	al		Sara Spiegelman (sspiegelman@wmllp.com)
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247.	***Picard v. Frederic J. Perlen***	11-cv-09368-JSR	Fulbright & Jaworski LLP David L. Barrack (dbarrack@fulbright.com) David A. Rosenzweig

			(drosenzweig@fulbright.com)
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250.	***Picard v. Lake Drive LLC, et al***	11-cv-09371-JSR	Katten Muchin Rosenman LLP Anthony L. Paccione (anthony.paccione@kattenlaw.com) Brian A. Schmidt (brian.schmidt@kattenlaw.com)
251.	***Picard v. Bear Lake Partners, et al***	11-cv-09372-JSR	Katten Muchin Rosenman LLP Anthony L. Paccione (anthony.paccione@kattenlaw.com) Brian A. Schmidt (brian.schmidt@kattenlaw.com)
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253.	***Picard v. United Congregations Mesora***	11-cv-09445-JSR (Joined *Picard v. Wolfson Equities* 11-cv-09449)	K&L Gates LLP Richard A. Kirby (richard.kirby@klgates.com) Laura Clinton (laura.clinton@klgates.com) Martha Rodriguez Lopez (martha.rodriguezlopez@klgates.com)
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		11-cv-09449)	(richard.kirby@klgates.com) Laura Clinton (laura.clinton@klgates.com) Martha Rodriguez Lopez (martha.rodriguezlopez@klgates.com)
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			Laura Clinton (laura.clinton@klgates.com) Martha Rodriguez Lopez (martha.rodriguezlopez@klgates.com)
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			David J. Eiseman (deiseman@golenbock.com) Douglas L. Furth (dfurth@golenbock.com)
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			David Bernfeld (davidbernfeld@bernfeld-dematteo.com) Jeffrey Bernfeld (jeffreybernfeld@bernfeld-dematteo.com)
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			(davidbernfeld@bernfeld-dematteo.com) Jeffrey Bernfeld (jeffreybernfeld@bernfeld-dematteo.com)
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			Jeffrey Bernfeld (jeffreybernfeld@bernfeld-dematteo.com)
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UNITED STATES DISTRICT 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 (SMB) SIPA LIQUIDATION (Substantively consolidated)
AARON BLECKER, et al., Appellants, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1236 (PAE)
DIANA MELTON TRUST, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1151 (PAE)

EDWARD A. ZRAICK, JR., et al., Appellants, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1195 (PAE)
ELLIOT G. SAGOR, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1263 (PAE)
MICHAEL C. MOST, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1223

APPENDIX ON BEHALF OF APPELLEE IRVING H. PICARD, TRUSTEE
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BAKER HOSTETLER LLP
David J. Sheehan
Seanna R. Brown
Amy E. Vanderwal
45 Rockefeller Plaza
14th Floor
New York, NY 10111
Telephone: 212.589.4200

Attorneys for Appellee

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			(jeffreybernfeld@bernfeld-dematteo.com)
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[2] Moving defendants are The Estate of Meyer Goldman, Joshua L. Goldman, Jordan S. Goldman, Sasha D. Goldman, and Elizabeth H. Goldman but do not join in argument Section III.B.4 of Cohen's memorandum.

[3] Moving parties are JOEL BUSEL REVOCABLE TRUST, SANDRA BUSEL REVOCABLE TRUST, SANDRA BUSEL, in her capacity as Trustee of the Sandra Busel Revocable Trust and Joel Busel Revocable Trust, and in her capacity as grantor of the Sandra Busel Revocable Trust, JOEL BUSEL, in his capacity as Trustee of the Joel Busel Revocable Trust and Sandra Busel Revocable Trust, and in his capacity as grantor of the Joel Busel Revocable Trust.

		0519-JSR	(susan.balaschak@akerman.com) Kathlyn Schwartz (kathlyn.schwartz@akerman.com) Elissa P. Fudim (elissa.fudim@akerman.com) Michael I. Goldberg (michael.goldberg@akerman.com)
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			(kathlyn.schwartz@akerman.com) Elissa P. Fudim (elissa.fudim@akerman.com) Michael I. Goldberg (michael.goldberg@akerman.com) Flemming Zulack Williamson Zauderer LLP John F. Zulack (jzulack@fzwz.com) Megan P. Davis (mdavis@fzwz.com)
323.	***Picard v. Radosh Partners, a Florida Partnership et al.***	12-cv-00532-JSR; Moved to join *Picard v. Cohen*, 12-cv-0519-JSR	Akerman Senterfitt LLP Susan F. Balaschak (susan.balaschak@akerman.com) Kathlyn Schwartz (kathlyn.schwartz@akerman.com) Elissa P. Fudim (elissa.fudim@akerman.com) Michael I. Goldberg (michael.goldberg@akerman.com)
324.	***Picard v. Celia Paleologos Revocable Trust dated 5/26/98, a Florida Trust et al.***	12-cv-00533-JSR; Moved to join *Picard v. Cohen*, 12-cv-0519-JSR	Akerman Senterfitt LLP Susan F. Balaschak (susan.balaschak@akerman.com) Kathlyn Schwartz (kathlyn.schwartz@akerman.com) Elissa P. Fudim (elissa.fudim@akerman.com) Michael I. Goldberg (michael.goldberg@akerman.com)
325.	***Picard v. Merida Associates, Inc. et al.***	12-cv-00534-JSR; Moved to join *Picard v. Cohen*, 12-cv-0519-JSR	Akerman Senterfitt LLP Susan F. Balaschak (susan.balaschak@akerman.com) Kathlyn Schwartz (kathlyn.schwartz@akerman.com) Elissa P. Fudim (elissa.fudim@akerman.com)

			Michael I. Goldberg (michael.goldberg@akerman.com)
326.	***Picard v. The Judie Lifton 1996 Revocable Trust et al.*** (Martin Lifton, in his capacity as Trustee of the Judie Lifton 1996 Revocable Trust dated September 5, 1996)	12-cv-00535-JSR; Moved to join *Picard v. Cohen*, 12-cv-0519-JSR	Akerman Senterfitt LLP Susan F. Balaschak (susan.balaschak@akerman.com) Kathlyn Schwartz (kathlyn.schwartz@akerman.com) Elissa P. Fudim (elissa.fudim@akerman.com) Michael I. Goldberg (michael.goldberg@akerman.com)
327.	***Picard v. Martin Lifton***	12-cv-00536-JSR; Moved to join *Picard v. Cohen*, 12-cv-0519-JSR	Akerman Senterfitt LLP Susan F. Balaschak (susan.balaschak@akerman.com) Kathlyn Schwartz (kathlyn.schwartz@akerman.com) Elissa P. Fudim (elissa.fudim@akerman.com) Michael I. Goldberg (michael.goldberg@akerman.com)
328.	***Picard v. Allyn Levy Revocable Trust et al.***	12-cv-00537-JSR; Moved to join *Picard v. Cohen*, 12-cv-0519-JSR	Akerman Senterfitt LLP Susan F. Balaschak (susan.balaschak@akerman.com) Kathlyn Schwartz (kathlyn.schwartz@akerman.com) Elissa P. Fudim (elissa.fudim@akerman.com) Michael I. Goldberg (michael.goldberg@akerman.com)
329.	***Picard v. Krellenstein Family Limited Partnership II of 1999 et al.***	12-cv-00538-JSR; Moved to join *Picard v. Cohen*, 12-cv-0519-JSR	Akerman Senterfitt LLP Susan F. Balaschak (susan.balaschak@akerman.com) Kathlyn Schwartz (kathlyn.schwartz@akerman.com) Elissa P. Fudim (elissa.fudim@akerman.com)

			Michael I. Goldberg (michael.goldberg@akerman.com)
330.	***Picard v. Estate of Sam W. Klein et al.***	12-cv-00539-JSR; Moved to join *Picard v. Cohen*, 12-cv-0519-JSR	Akerman Senterfitt LLP Susan F. Balaschak (susan.balaschak@akerman.com) Kathlyn Schwartz (kathlyn.schwartz@akerman.com) Elissa P. Fudim (elissa.fudim@akerman.com) Michael I. Goldberg (michael.goldberg@akerman.com)
331.	***Picard v. Ringler Partners, L.P., et al***	12-cv-00606-JSR	Kudman Trachten Aloe LLP Paul H. Aloe (paloe@kudmanlaw.com) Evan S. Cowit (ecowit@kudmanlaw.com) Matthew H. Cohen (mcohen@kudmanlaw.com)
332.	***Picard v. Mar Partners and Alvin Rush***	12-cv-00607-JSR; Moved to join *Picard v. Cohen*, 12-cv-0519-JSR	Akerman Senterfitt LLP Susan F. Balaschak (susan.balaschak@akerman.com) Kathlyn Schwartz (kathlyn.schwartz@akerman.com) Elissa P. Fudim (elissa.fudim@akerman.com) Michael I. Goldberg (michael.goldberg@akerman.com)
333.	***Picard v. L. Rags, Inc.***	12-cv-00608-JSR; Moved to join *Picard v. Cohen*, 12-cv-0519-JSR	Akerman Senterfitt LLP Susan F. Balaschak (susan.balaschak@akerman.com) Kathlyn Schwartz (kathlyn.schwartz@akerman.com) Elissa P. Fudim (elissa.fudim@akerman.com) Michael I. Goldberg (michael.goldberg@akerman.com)

334.	***Picard v. The Ruth Rosen Family Limited Partnership et al.***	12-cv-00609-JSR; Moved to join *Picard v. Cohen*, 12-cv-0519-JSR	Akerman Senterfitt LLP Susan F. Balaschak (susan.balaschak@akerman.com) Kathlyn Schwartz (kathlyn.schwartz@akerman.com) Elissa P. Fudim (elissa.fudim@akerman.com) Michael I. Goldberg (michael.goldberg@akerman.com)
335.	***Picard v. Mike Stein***	12-cv-00610-JSR; Moved to join *Picard v. Cohen*, 12-cv-0519-JSR	Akerman Senterfitt LLP Susan F. Balaschak (susan.balaschak@akerman.com) Kathlyn Schwartz (kathlyn.schwartz@akerman.com) Elissa P. Fudim (elissa.fudim@akerman.com) Michael I. Goldberg (michael.goldberg@akerman.com)
336.	***Picard v. Linda S. Waldman***	12-cv-00611-JSR; Moved to join *Picard v. Cohen*, 12-cv-0519-JSR	Akerman Senterfitt LLP Susan F. Balaschak (susan.balaschak@akerman.com) Kathlyn Schwartz (kathlyn.schwartz@akerman.com) Elissa P. Fudim (elissa.fudim@akerman.com) Michael I. Goldberg (michael.goldberg@akerman.com)
337.	***Picard v. Richard E. Winter Revocable Trust u/a Dated October 30, 2002 et al.***	12-cv-00612-JSR; Moved to join *Picard v. Cohen*, 12-cv-0519-JSR	Akerman Senterfitt LLP Susan F. Balaschak (susan.balaschak@akerman.com) Kathlyn Schwartz (kathlyn.schwartz@akerman.com) Elissa P. Fudim (elissa.fudim@akerman.com) Michael I. Goldberg (michael.goldberg@akerman.com)

338.	***Picard v. Epstein Family Trust UWO Diana Epstein, et al***	12-cv-00645-JSR	Dickstein Shapiro LLP Eric Fisher (fishere@dicksteinshapiro.com) Stefanie Birbrower Greer (greers@dicksteinshapiro.com)
339.	***Picard v. Beaser Investment Company, LP, et al***	12-cv-00696-JSR	Blank Rome LLP James V. Masella, III (JMasella@BlankRome.com) Anthony A. Mingione (AMingione@BlankRome.com) Ryan E. Cronin (RCronin@BlankRome.com)
340.	***Picard v. Samuel Beaser Amended & Restated Trust, et al***	12-cv-00697-JSR	Blank Rome LLP James V. Masella, III (JMasella@BlankRome.com) Anthony A. Mingione (AMingione@BlankRome.com) Ryan E. Cronin (RCronin@BlankRome.com)
341.	***Picard v. Zieses Investment Partnership, et al***	12-cv-00698-JSR	Blank Rome LLP James V. Masella, III (JMasella@BlankRome.com) Anthony A. Mingione (AMingione@BlankRome.com) Ryan E. Cronin (RCronin@BlankRome.com)
342.	***Picard v. G.S. Schwartz & Co., Inc, et al***	12-cv-00699-JSR	Blank Rome LLP James V. Masella, III (JMasella@BlankRome.com) Anthony A. Mingione (AMingione@BlankRome.com) Ryan E. Cronin (RCronin@BlankRome.com)
343.	***Picard v. Marvin L. Olshan***	12-cv-00701-JSR	Olshan Grundman Frome Rosenzweig & Wolosky LLP Thomas J. Fleming

			(tfleming@olshanlaw.com) Joshua S. Androphy (jandrophy@olshanlaw.com)
344.	***Picard v. The Croul Family Trust, et al***	12-cv-00758-JSR	Morrison & Foerster LLP Carl H. Loewenson, Jr. (cloewenson@mofo.com) David S. Brown (dbrown@mofo.com)
345.	***Picard v. Cohen Pooled Asset Account, et al***	12-cv-00883-JSR	Shapiro, Arato & Isserles LLP Alexandra A.E. Shapiro (ashapiro@machtshapiro.com) Eric S. Olney (eolney@shapiroarato.com)
346.	***Picard v. Cohen Pooled Asset Account, et al.*** (Cohen Pooled Asset Account, 61 Associates LLC, and Amy S. Cohen joined)	12-cv-00883-JSR; Moved to join in same action	Proskauer Rose Richard L. Spinogatti (rspinogatti@proskauer.com)
347.	***Picard v. Ostrin Family Partnership, et al***	12-cv-00884-JSR	Law Office of Richard E. Signorelli Richard E. Signorelli (rsignorelli@nyclitigator.com) Bryan Ha (bhanyc@gmail.com)
348.	***Picard v. The Alan Miller Diane Miller Revocable Trust, et al.***	12-cv-00885-JSR	Maslon Edelman Borman & Brand, LLP Kesha Lynn Tanabe (kesha.tanabe@maslon.com)
349.	***Picard v. Edward T. Coughlin, et al***	12-cv-00886-JSR	Lewis & McKenna Paul Z. Lewis (plewis@lewismckenna.com)
350.	***Picard v. Diane Wilson***	12-cv-00887-JSR	Simon & Partners LLP Kenneth C. Murphy kcmurphy@simonalawyers.com
351.	***Picard v. Gertrude E. Alpern Rev. Trust, et al***	12-cv-00939-JSR	Klestadt & Winters, LLP Tracy L. Klestadt (tklestadt@klestadt.com)

			John E. Jureller, Jr. (jjureller@klestadt.com) Brendan M. Scott (bscott@klestadt.com)
352.	***Picard v. Lewis Alpern and Jane Alpern***	12-cv-00940-JSR	Klestadt & Winters, LLP Tracy L. Klestadt (tklestadt@klestadt.com) John E. Jureller, Jr. (jjureller@klestadt.com) Brendan M. Scott (bscott@klestadt.com)
353.	***Picard v. Arnold Shapiro 11/9/96 Trust et al***	12-cv-00941-JSR	Klestadt & Winters, LLP Tracy L. Klestadt (tklestadt@klestadt.com) John E. Jureller, Jr. (jjureller@klestadt.com) Brendan M. Scott (bscott@klestadt.com)
354.	***Picard v. Samdia Family, L.P., et al.***	12-cv-00942-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
355.	***Picard v. Kenneth W. Perlman, et al***	12-cv-00943-JSR	Blank Rome LLP James V. Masella, III (JMasella@BlankRome.com) Anthony A. Mingione (AMingione@BlankRome.com) Ryan E. Cronin (RCronin@BlankRome.com)
356.	***Picard v. Leonard R. Ganz and Roberta Ganz***	12-cv-00944-JSR	Blank Rome LLP James V. Masella, III (JMasella@BlankRome.com) Anthony A. Mingione (AMingione@BlankRome.com) Ryan E. Cronin (RCronin@BlankRome.com)

357.	***Picard v. George N. Faris***	12-cv-00945-JSR	Blank Rome LLP James V. Masella, III (JMasella@BlankRome.com) Anthony A. Mingione (AMingione@BlankRome.com) Ryan E. Cronin (RCronin@BlankRome.com)
358.	***Picard v. Kreitman***	12-cv-01134-JSR	Blank Rome LLP James V. Masella, III (JMasella@BlankRome.com) Anthony A. Mingione (AMingione@BlankRome.com) Ryan E. Cronin (RCronin@BlankRome.com)
359.	***Picard v. Lexus Worldwide Ltd and Ilan Kelson*** (Moving Party is Ilan Kelson)	12-cv-01135-JSR	Dickstein Shapiro LLP Eric Fisher (fishere@dicksteinshapiro.com) Stefanie Birbrower Greer (greers@dicksteinshapiro.com)
360.	***Picard v. Gorek*** (Bankr. Dkt No. 10-04797)	12-cv-01137-JSR	Day Pitney LLP Thomas D. Goldberg (tgoldberg@daypitney.com)
361.	***Picard v. Gorek, et al*** (Bankr. Dkt No. 10-04623)	12-cv-01138-JSR	Day Pitney LLP Thomas D. Goldberg (tgoldberg@daypitney.com)
362.	***Picard v. Philadelphia Financial Life Assurance Co.*** (Bankr. Dkt. No. 10-04973)	12-cv-01228-JSR	Otterbourg, Steindler, Houston & Rosen, P.C. Richard Gerard Haddad (rhaddad@oshr.com)
363.	***Picard v. Philadelphia Financial Life Assurance Co.*** (Bankr. Dkt. No. 10-05065)	12-cv-01229-JSR	Otterbourg, Steindler, Houston & Rosen, P.C. Richard Gerard Haddad (rhaddad@oshr.com)
364.	***Picard v. Weindling***	12-cv-01690-JSR	Golenbock Eiseman Assor Bell & Peskoe LLP Douglas L. Furth (dfurth@golenbock.com) Jacqueline G. Veit (jveit@golenbock.com)

365.	***Picard v. Estate of Elaine S. Fox, et al***	12-cv-01691-JSR	Cole, Schotz, Meisel, Forman & Leonard, P.A. Laurence May (lmay@coleschotz.com) Jill B. Bienstock (jbienstock@coleschotz.com)
366.	***Picard v. Estate of Marvin Kirsten, et al***	12-cv-01692-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
367.	***Picard v. Lehrer et al.*** (moving party Elaine Stein Roberts)	12-cv-01811-JSR; Moved to join *Picard v. Hein*, 11-cv-4936-JSR	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)
368.	***Picard v. Lehrer et al.*** (moving party Douglas Ellenoff)	12-cv-02079-JSR; Moved to join *Picard v. Goldstein* MTWR, 11-cv-8491-JSR and 10-ap-4482 (Bankr)	Ellenoff Grossman & Schole LLP Ted Poretz tporetz@egsllp.com
369.	***Picard v. Pergament Equities LLC***	12-cv-02153-JSR	Holland & Knight LLP H. Barry Vasios (barry.vasios@hklaw.com) Barbra R. Parlin (barbra.parlin@hklaw.com)
370.	***Picard v. Barbara Kotlikoff Harman***	12-cv-02155-JSR	Stroock & Stroock & Lavan, LLP Melvin A. Brosterman (mbrosterman@stroock.com) Danielle Alfonzo Walsman (dwalsman@stroock.com) Christopher Guhin (cguhin@stroock.com) Michele L. Pahmer (mpahmer@stroock.com)
371.	***Picard v. Amy R. Roth***	12-cv-02156-JSR	Stroock & Stroock & Lavan, LLP Melvin A. Brosterman (mbrosterman@stroock.com) Danielle Alfonzo Walsman (dwalsman@stroock.com) Christopher Guhin (cguhin@stroock.com)

			Michele L. Pahmer (mpahmer@stroock.com)
372.	***Picard v. Benjamin W. Roth and Marion B. Roth***	12-cv-02157-JSR	Stroock & Stroock & Lavan, LLP Melvin A. Brosterman (mbrosterman@stroock.com) Danielle Alfonzo Walsman (dwalsman@stroock.com) Christopher Guhin (cguhin@stroock.com) Michele L. Pahmer (mpahmer@stroock.com)
373.	***Picard v. The Gloria Albert Sandler and Maurice Sandler Revocable Living Trust, et al.***	12-cv-02158-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
374.	***Picard v. Glenhaven Limited and Mathew L. Gladstein***	12-cv-02159-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
375.	***Picard v. Sandy Sandler***	12-cv-02160-JSR (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
376.	***Picard v. Milton Goldworth***	12-cv-02226-JSR	Fulbright & Jaworski LLP David L. Barrack (dbarrack@fulbright.com) David A. Rosenzweig (drosenzweig@fulbright.com)
377.	***Picard v. Keystone Electronics Corp. Employee Profit Sharing Trust, et al***	12-cv-02228-AKH	Fox Rothschild LLP Keith Ryan McMurdy (kmcmurdy@foxrothschild.com)
378.	***Picard v. Marjorie Most***	12-cv-02278-JSR	Stim & Warmuth, P.C. Paula J. Warmuth (pjw@stim-warmuth.com) Glenn P. Warmuth (gpw@stim-warmuth.com)

379.	***Picard v. Michael Most***	12-cv-02279-JSR	Stim & Warmuth, P.C. Paula J. Warmuth (pjw@stim-warmuth.com) Glenn P. Warmuth (gpw@stim-warmuth.com)
380.	***Picard v. Irving J. Pinto 1996 Grantor Retained Annuity Trust, et al.***	12-cv-02309-JSR	Bruce S. Schaeffer (bruce.schaeffer@gmail.com)
381.	***Picard v. Estate of Muriel Lederman, et al.***	12-cv-02312-JSR	Stroock & Stroock & Lavan, LLP Melvin A. Brosterman (mbrosterman@stroock.com) Danielle Alfonzo Walsman (dwalsman@stroock.com) Christopher Guhin (cguhin@stroock.com) Michele L. Pahmer (mpahmer@stroock.com) Kramer Levin Naftalis & Frankel LLP Elise Scherr Frejka (efrejka@kramerlevin.com) Philip Bentley (pbentley@kramerlevin.com)
382.	***Picard v. M. Harvey Rubin Trust of 11/11/92, et al.***	12-cv-02314-JSR	Weisman Celler Spett & Modlin, P.C. Kenneth A. Hicks (khicks@wcsm445.com) John B. Sherman (jsherman@wcsm445.com)
383.	***Picard v. Joan Roman*** **[Amended Motion to Withdraw]**	12-cv-02315-JSR	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
384.	***Picard v. S&P Associates*** **[Amended Motion to Withdraw]**	12-cv-02316-JSR	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
385.	***Picard v. P&S Associates*** **[Amended Motion to**	12-cv-02317-JSR	Becker & Poliakoff LLP Helen Davis Chaitman

	Withdraw]		(Hchaitman@beckerny.com)
386.	***Picard v. Robert Roman*** **[Amended Motion to Withdraw]**	12-cv-02318-JSR	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
387.	***Picard v. Barbara S. Gross 2006 Grat, et al***	12-cv-02337-JSR	Moses & Singer LLP Mark N. Parry (mparry@mosessinger.com)
388.	***Picard v. L&I Investments, LLC***	12-cv-02338-JSR	Moses & Singer LLP Mark N. Parry (mparry@mosessinger.com)
389.	***Picard v. Steven E. Leber Charitable Remainer Unitrust, et al***	12-cv-02339-JSR	Moses & Singer LLP Mark N. Parry (mparry@mosessinger.com)
390.	***Picard v. Walter J. Gross Revocable Trust, et al.***	12-cv-02340-JSR	Moses & Singer LLP Mark N. Parry (mparry@mosessinger.com)
391.	***Picard v. Shum Family Partnership III, LP, et al.***	12-cv-02342-JSR	Moses & Singer LLP Mark N. Parry (mparry@mosessinger.com)
392.	***Picard v. Estate of Richard L. Cash, et al.***	12-cv-02344-JSR	Katsky Korins LLP Robert A. Abrams (rabrams@katskykorins.com)
393.	***Picard v. Freda Epstein Revocable Trust, et al.***	12-cv-02345-JSR	Katsky Korins LLP Robert A. Abrams (rabrams@katskykorins.com)
394.	***Picard v. Gladys Cash, et al.***	12-cv-02346-JSR	Katsky Korins LLP Robert A. Abrams (rabrams@katskykorins.com)
395.	***Picard v. S.H. & Helen R. Scheuer Family Foundation, Inc.***	12-cv-02348-JSR	Katsky Korins LLP Robert A. Abrams (rabrams@katskykorins.com)
396.	***Picard v. Ronald Eisenberg 1995 Continuing Trust, et al.***	12-cv-02352-JSR	Proskauer Rose LLP Richard L. Spinogatti (rspinogatti@proskauer.com)

397.	***Picard v. Isaac Blech***	12-cv-02353-JSR	Proskauer Rose LLP Richard L. Spinogatti (rspinogatti@proskauer.com)
398.	***Picard v. Calesa Associates, et al***	12-cv-02366-JSR	Latham & Watkins LLP Robert J. Rosenberg (robert.rosenberg@lw.com) Michael J. Riela (michael.riela@lw.com)
399.	***Picard v. Second Act Associates, L.P., et al.***	12-cv-02367-JSR	Sanders Ortoli Vaughn-Flam Rosenstadt LLP Jeremy B. Kaplan (jk@sovrlaw.com)
400.	***Picard v. Jay Gaines & Co., Inc. Profit Sharing Plan, et al***	12-cv-02370-JSR	Sills, Cummins, & Gross P.C. George R. Hirsch (ghirsch@sillscummis.com)
401.	***Picard v. The Arthur and Rochelle Belfer Foundation, Inc., et al.***	12-cv-02372-JSR	Schlam Stone & Dolan LLP Richard H. Dolan (rhd@schlamstone.com) Bennette D. Kramer (bdk@schlamstone.com)
402.	***Picard v. Estate of Maurice U. Rosenfeld A/K/A Maurice Rosenfield , et al***	12-cv-02374-JSR	Bryan Cave LLP Thomas J. Schell (tjschell@bryancave.com) J.L. Saffer, P.C. Jennifer L. Saffer (jlsaffer@jlsaffer.com)
403.	***Picard v. The Estate of Sarah E. Pearce, et al.***	12-cv-02375-JSR	Bryan Cave LLP Thomas J. Schell (tjschell@bryancave.com)
404.	***Picard v. Eli N. Budd***	12-cv-02376-JSR	McClay Alton, P.L.L.P. (law@mcclay-alton.com)
405.	***Picard v. James B. Pinto Revocable Trust U/A dtd 12/1/03, et al.***	12-cv-02377-JSR	McClay Alton, P.L.L.P. (law@mcclay-alton.com)

406.	***Picard v. Amy Pinto Lome Revocable Trust, U/A Dtd 5/22/0, et al.***	12-cv-02378-JSR	McClay Alton, P.L.L.P. (law@mcclay-alton.com)
407.	***Picard v. Robert Nystrom***	12-cv-02403-JSR	Friedman Kaplan Seiler & Adelman LLP; Clayman & Rosenberg LLP William P. Weintraub (wweintraub@fklaw.com) Gregory W. Fox (gfox@fklaw.com) Clayman & Rosenberg LLP Seth L. Rosenberg (rosenberg@clayro.com) Brian D. Linder (linder@clayro.com)
408.	***Picard v. Jeffrey Hinte***	12-cv-02404-JSR	Martin J. Auerbach; Zuckerman Spaeder LLP; Friedman Kaplan Seiler & Adelman LLP (auerbach@mjaesq.com) Zuckerman Spaeder LLP Laura E. Neish (lneish@zuckerman.com) Friedman Kaplan Seiler & Adelman LLP William P. Weintraub (wweintraub@fklaw.com) Kizzy L. Jarashow (kjarashow@fklaw.com)
409.	***Picard v. Kostin Company, et al.***	12cv-02409-JSR	Morgan, Lewis & Bockius LLP Bernard J. Garbutt III (bgarbutt@morganlewis.com) Menachem O. Zelmanovitz (mzelmanovitz@morganlewis.com) Andrew D. Gottfried (agottfried@morganlewis.com)

410.	***Picard v. P.B. Robco, Inc.***	12-cv-02410 (Joined *Picard v. Abel* 11-cv-07766)	Becker & Poliakoff LLP Helen Davis Chaitman (Hchaitman@beckerny.com)
411.	***Picard v. Estate of William E. Sorrel, et al***	12-cv-02411-JSR	Rosenfeld & Kaplan, LLP Tab K. Rosenfeld (tab@rosenfeldlaw.com) Steven Kaplan (steve@rosenfeldlaw.com)
412.	***Picard v. Rita Sorrel***	12-cv-02412-JSR	Rosenfeld & Kaplan, LLP Tab K. Rosenfeld (tab@rosenfeldlaw.com) Steven Kaplan (steve@rosenfeldlaw.com)
413.	***Picard v. Buffalo Laborers' Pension Fund, et al.***	12-cv-02413-JSR	Proskauer Rose LLP (rspinogatti@proskauer.com)
414.	***Picard v. Nancy Portnoy***	12-cv-02414-JSR	Kostelanetz & Fink LLP Brian C. Wille (bwille@kflaw.com) Christopher M. Ferguson (cferguson@kflaw.com)
415.	***Picard v. Milton Davis Non-Exempt Marital Trust U/A 12/13/84, et al.***	12-cv-02415-JSR	Whiteford Taylor & Preston LLP; Levin & Gann, P.A. Brent C. Strickland (bstrickland@wtplaw.com) Paul M. Nussbaum (pnussbaum@wtplaw.com) Kenneth Oestreicher (koestreicher@wtplaw.com) Levin & Gann, P.A. Stanford G. Gann, Sr. (sgann@levingann.com)
416.	***Picard v. G. Bruce Lifton***	12-cv-02416-JSR	Meyer, Suozzi, English & Klein, P.C. Alan Evan Marder (amarder@msek.com)

417.	***Picard v. The Judie Lifton 1996 Revocable Trust DTD 9/5/1996, et al***	12-cv-02417-JSR	Meyer, Suozzi, English & Klein, P.C Alan Evan Marder (amarder@msek.com)
418.	***Picard v. Steven J. Lifton***	12-cv-02420-JSR	Meyer, Suozzi, English & Klein, P.C. Alan Evan Marder (amarder@msek.com)
419.	***Picard v. Estate of John Y. Seskis, et al.***	12-cv-02427-JSR	Sills Cummis & Gross, P.C. Kenneth R. Schachter (kschachter@sillscummis.com) Lori K. Sapir (lsapir@sillscummis.com)
420.	***Picard v. Fab Industries, Inc., et al***	12-cv-02428-JSR	Sills Cummis & Gross, P.C. Kenneth R. Schachter (kschachter@sillscummis.com) Lori K. Sapir (lsapir@sillscummis.com)
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UNITED STATES DISTRICT 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 (SMB) SIPA LIQUIDATION (Substantively consolidated)
AARON BLECKER, et al., Appellants, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1236 (PAE)
DIANA MELTON TRUST, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1151 (PAE)

EDWARD A. ZRAICK, JR., et al., Appellants, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1195 (PAE)
ELLIOT G. SAGOR, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1263 (PAE)
MICHAEL C. MOST, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1223

APPENDIX ON BEHALF OF APPELLEE IRVING H. PICARD, TRUSTEE
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BAKER HOSTETLER LLP
David J. Sheehan
Seanna R. Brown
Amy E. Vanderwal
45 Rockefeller Plaza
14th Floor
New York, NY 10111
Telephone: 212.589.4200

Attorneys for Appellee

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			(richard.kirby@klgates.com) Laura Clinton (laura.clinton@klgates.com) Martha Rodriguez Lopez (martha.rodriguezlopez@klgates.com)
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			(scottj@sullcrom.com) Patrick B. Berarducci (berarduccip@sullcrom.com)
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			(mlichtenstein@crowell.com) Steven B. Eichel (seichel@crowell.com) Quilling, Selander, Lownds, Winslett & Moser, P.C. Linda S. LaRue (llarue@qslwm.com)
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			Martin B. Shulkin (MBShulkin@duanemorris.com) Paul D. Moore (PDMoore@duanemorris.com) Jeffrey D. Sternklar (JDSternklar@duanemorris.com) William Heuer (wheuer@duanemorris.com)
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			(PDMoore@duanemorris.com) Jeffrey D. Sternklar (JDSternklar@duanemorris.com) William Heuer (wheuer@duanemorris.com)
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			William Heuer (wheuer@duanemorris.com)
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			Bryan Ha (bhanyc@gmail.com)
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507.	***Picard v. Michael S. Leeds, et al.***	12-cv-02785-JSR	Dow Lohnes PPLC Leslie H. Wiesenfelder (lwiesenfelder@dowlohnes.com) Brent Olson (bolson@dowlohnes.com) Michael Hays (mhays@dowlohnes.com) Daniel Prichard (dprichard@dowlohnes.com)

508.	***Picard vs. The Leeds Partnership, et al.***	12-cv-02786-JSR	Dow Lohnes PPLC Leslie H. Wiesenfelder (lwiesenfelder@dowlohnes.com) Brent Olson (bolson@dowlohnes.com) Michael Hays (mhays@dowlohnes.com) Daniel Prichard (dprichard@dowlohnes.com)
509.	***Picard v. MAF Associates, LLC, et al.***	12-cv-02788-JSR	King & Spalding LLP Arthur J. Steinberg (asteinberg@kslaw.com) Heath D. Rosenblat (hrosenblat@kslaw.com)
510.	***Picard v. Lisa Liebmann Adams***	12-cv-02789-JSR	Day Pitney LLP Helen Harris (hharris@daypitney.com)
511.	***Picard v. Estate of Ruth Schlesinger, et al*** (Estate of Ruth Schlesinger and Marcia Schlesinger Roiff – Moving Parties)	12-cv-02790-JSR	Foley Hoag LLP Kenneth S. Leonetti (kleonetti@foleyhoag.com)
512.	***Picard v. 1998 William Gershen Revocable Trust, et al***	12-cv-02791-JSR	Foley Hoag LLP Kenneth S. Leonetti (kleonetti@foleyhoag.com)
513.	***Picard vs. Dawn Pascucci Barnard, et al.***	12-cv-02792-JSR	King & Spalding LLP Arthur J. Steinberg (asteinberg@kslaw.com) Heath D. Rosenblat (hrosenblat@kslaw.com)
514.	***Picard v. Herbert R. Goldenberg Revocable Trust, et al***	12-cv-02793-JSR	Klestadt & Winters LLP Tracy L. Klestadt (tklestadt@klestadt.com)

			Brendan M. Scott (bscott@klestadt.com) Leonard, Street and Deinard Allen I Saeks (ais1548@leonard.com) Blake Shepard (blake.shepard@leonard.com)
515.	***Picard v. Dean L. Greenberg***	12-cv-02794-JSR; incorporates by reference (not through joinder) arguments and authorities from *Picard v. Greiff*, No. 11-03775; *Picard v. Katz*, No. 11-03605; *Picard v. Flinn Investments, LLC et al.*, __ F.Supp.2d ___, 2011 U.S. Dist. LEXIS 136627 (S.D.N.Y. 2011); *Picard v. Avellino et al.*, No. 11-03882; *Picard v. Maxam Absolute Return Fund L.P. et al.*, No. 11-07428	Klestadt & Winters LLP Tracy L. Klestadt (tklestadt@klestadt.com) Brendan M. Scott (bscott@klestadt.com) Leonard, Street and Deinard Allen I Saeks (ais1548@leonard.com) Blake Shepard (blake.shepard@leonard.com)
516.	***Picard v. Estate of Samuel Robert Roitenberg, et al.***	12-cv-02795-JSR; incorporates by reference (not through joinder) arguments and authorities from *Picard v. Greiff*, No. 11-03775; *Picard v. Katz*, No. 11-03605; *Picard v. Flinn Investments, LLC et al.*, __ F.Supp.2d ___, 2011 U.S. Dist. LEXIS 136627 (S.D.N.Y. 2011); *Picard v. Avellino et al.*, No. 11-03882; *Picard v. Maxam Absolute Return Fund L.P. et al.*, No. 11-07428	Klestadt & Winters LLP Tracy L. Klestadt (tklestadt@klestadt.com) Brendan M. Scott (bscott@klestadt.com) Leonard, Street and Deinard Allen I Saeks (ais1548@leonard.com) Blake Shepard (blake.shepard@leonard.com)

517.	***Picard v. Sheldon Shaffer, et al.***	12-cv-02796-JSR	Klestadt & Winters LLP Tracy L. Klestadt (tklestadt@klestadt.com) Brendan M. Scott (bscott@klestadt.com) Leonard, Street and Deinard Allen I Saeks (ais1548@leonard.com) Blake Shepard (blake.shepard@leonard.com)
518.	***Picard v. Sheldon Shaffer Trust Dtd 3/26/1996, et al.***	12-cv-02797-JSR	Klestadt & Winters LLP Tracy L. Klestadt (tklestadt@klestadt.com) Brendan M. Scott (bscott@klestadt.com) Leonard, Street and Deinard Allen I Saeks (ais1548@leonard.com) Blake Shepard (blake.shepard@leonard.com)
519.	***Picard v. Sidney Ladin Revocable Trust Dated 12/30/96, et al.***	12-cv-02798-JSR	Klestadt & Winters LLP Tracy L. Klestadt (tklestadt@klestadt.com) Brendan M. Scott (bscott@klestadt.com) Leonard, Street and Deinard Allen I Saeks (ais1548@leonard.com) Blake Shepard (blake.shepard@leonard.com)
520.	***Picard vs. Samuel Robinson***	12-cv-02799-JSR	Klestadt & Winters LLP Tracy L. Klestadt (tklestadt@klestadt.com)

			Brendan M. Scott (bscott@klestadt.com)
521.	***Picard v. Doris Glantz Living Trust, et al***	12-cv-02801-JSR	Klestadt & Winters LLP Tracy L. Klestadt (tklestadt@klestadt.com) Brendan M. Scott (bscott@klestadt.com)
522.	***Picard vs. The Estate of Doris Igoin, et al.***	12-cv-02872-JSR	Kelley Drye & Warren LLP Jonathan K. Cooperman (Jcooperman@KelleyDrye.com) Seungwhan Kim (skim@kelleydrye.com)
523.	***Picard vs. Burton R. Sax***	12-cv-02873-JSR	Meltzer, Lippe, Goldstein & Breitsone, LLP Thomas J. McGowan (tmcgowan@meltzerlippe.com)
524.	***Picard v. Sax-Bartels Associates, Limited Partnership***	12-cv-02874-JSR	Meltzer, Lippe, Goldstein & Breitsone, LLP Pedram A. Tabibi (ptabibi@meltzerlippe.com) Sally M. Donahue (sdonahue@meltzerlippe.com)
525.	***Picard vs. The 1995 Jack Parker Descendant Trust No. 1, et al.***	12-cv-02875-JSR	Kasowitz, Benson, Torres, & Friedman LLP Marc E. Kasowitz (mkasowitz@kasowitz.com) Daniel J. Fetterman (dfetterman@kasowitz.com) David J. Mark (dmark@kasowitz.com)
526.	***Picard vs. JRAG, LLC, et al.***	12-cv-02876-JSR	Kasowitz, Benson, Torres, & Friedman LLP Marc E. Kasowitz (mkasowitz@kasowitz.com) Daniel J. Fetterman (dfetterman@kasowitz.com) David J. Mark (dmark@kasowitz.com)
527.	***Picard v. The Article Fourth Non-Exempt Trust Created***	12-cv-02879-JSR	Blank Rome LLP James V. Masella, III

	Under the Leo M. Klein Trust Dated June 14, 1989 as Amended and Restated, et al.		(JMasella@BlankRome.com) Anthony A. Mingione (AMingione@BlankRome.com) Ryan E. Cronin (RCronin@BlankRome.com)
528.	***Picard v. Howard Kaye***	12-cv-02884-JSR	McClaughlin & Stern, LLP Lee S. Shalov (lshalov@mclaughlinstern.com) Marc Rosenberg (mrosenberg@mclaughlinstern.com)
529.	***Picard v. Mildred S. Poland, et al***	12-cv-02885-JSR	McClaughlin & Stern, LLP Lee S. Shalov (lshalov@mclaughlinstern.com) Marc Rosenberg (mrosenberg@mclaughlinstern.com)
530.	***Picard v. Bernard Gordon, et al.***	12-cv-02922-JSR	Ruskin Moscou Faltischeck, P.C. Mark S. Mulholland (mmulholland@rmfpc.com) Thoams A. Telesca (ttelesca@rmfpc.com)
531.	***Picard vs. George E. Nadler***	12-cv-02923-JSR	Ingram Yuzek Gainen Carroll & Bertolotti, LLP Daniel L. Carroll (dcarroll@ingramllp.com) Jennifer B. Schain (jschain@ingramllp.com)
532.	***Picard v. Janis Berman***	12-cv-02924-JSR	Ingram Yuzek Gainen Carroll & Bertolotti, LLP Daniel L. Carroll (dcarroll@ingramllp.com) Jennifer B. Schain (jschain@ingramllp.com)
533.	***Picard vs. Candice Nadler Revocable Trust DTD 10/18/01, et al.***	12-cv-02925-JSR	Ingram Yuzek Gainen Carroll & Bertolotti, LLP Daniel L. Carroll (dcarroll@ingramllp.com) Jennifer B. Schain (jschain@ingramllp.com)

534.	***Picard v. Paul L. Loeb Living Trust, et al***	12-cv-02926-JSR	Katten Muchin Rosenman LLP Anthony L. Paccione (anthony.paccione@kattenlaw.com)
535.	***Picard vs. Scott Gottlieb, et al.***	12-cv-02931-JSR	Day Pitney LLP Joshua W. Cohen (jwcohen@daypitney.com)
536.	***Picard v. PetcareRX, Inc.***	12-cv-02932-JSR	Dickstein Shapiro LLP Deborah A. Skakel (Skakeld@dicksteinshapiro.com) Shaya M. Berger (bergers@dicksteinshapiro.com)
537.	***Picard v. The Robert Auerbach Revocable Trust, et al.***	12-cv-02975-JSR	Folkenflik & McGerity Max Folkenflik (MFolkenflik@fmlaw.net)
538.	***Picard v. CRS Revocable Trust, et al.***	12-cv-02976-JSR	Folkenflik & McGerity Max Folkenflik (MFolkenflik@fmlaw.net)
539.	***Picard v. Robert S. Bernstein***	12-cv-02977-JSR	Folkenflik & McGerity Max Folkenflik (MFolkenflik@fmlaw.net)
540.	***Picard v. Gutmacher Enterprises, LP, et al***	12-cv-02978-JSR	Folkenflik & McGerity Max Folkenflik (MFolkenflik@fmlaw.net)
541.	***Picard v. The S. James Coppersmith Charitable Remainder Unitrust, et al.***	12-cv-02979-JSR	Folkenflik & McGerity Max Folkenflik (MFolkenflik@fmlaw.net)
542.	***Picard v. Radcliff Investments Limited, et al.***	12-cv-02982-JSR	Clifford Chance US LLP Jeff E. Butler (jeff.butler@cliffordchance.com)
543.	***Picard v. Amy Joel***	12-cv-03100-JSR	Jaspan Schlesinger LLP Steven R. Schlesinger (sschlesinger@jaspanllp.com) Shannon Anne Scott (sscott@jaspanllp.com)

544.	***Picard v. Robert A. Luria, et al***	12-cv-03101-JSR	Jaspan Schlesinger LLP Steven R. Schlesinger (sschlesinger@jaspanllp.com) Shannon Anne Scott (sscott@jaspanllp.com)
545.	***Picard v. Amy J. Luria, et al.***	12-cv-03102-JSR	Jaspan Schlesinger LLP Steven R. Schlesinger (sschlesinger@jaspanllp.com) Shannon Anne Scott (sscott@jaspanllp.com)
546.	***Picard v. The Estate of Gladys C. Luria, et al.***	12-cv-03104-JSR	Jaspan Schlesinger LLP Steven R. Schlesinger (sschlesinger@jaspanllp.com) Shannon Anne Scott (sscott@jaspanllp.com)
547.	***Picard v. Patricia Samuels, et al.***	12-cv-03105-JSR	Jaspan Schlesinger LLP Steven R. Schlesinger (sschlesinger@jaspanllp.com) Shannon Anne Scott (sscott@jaspanllp.com)
548.	***Picard v. Sylvia Joel, et al.***	12-cv-03106-JSR	Jaspan Schlesinger LLP Steven R. Schlesinger (sschlesinger@jaspanllp.com) Shannon Anne Scott (sscott@jaspanllp.com)
549.	***Picard vs. The LDP Corp. Profit Sharing Plan and Trust, et al.***	12-cv-03107-JSR	Jaspan Schlesinger LLP Steven R. Schlesinger (sschlesinger@jaspanllp.com) Shannon Anne Scott (sscott@jaspanllp.com)
550.	***Picard v. Jeffrey Shankman***	12-cv-03108-JSR	Jaspan Schlesinger LLP Steven R. Schlesinger (sschlesinger@jaspanllp.com) Shannon Anne Scott (sscott@jaspanllp.com)

551.	***Picard v. Stanley Plesent***	12-cv-03403-JSR; adopts and incorporates *Picard v. Arthur M. Siskind*, 11-cv-8476-JSR and Adv. Pro. No. 10-4365	Pro Se Defendant 24 Maple Avenue Larchmont, NY 10538 914-834-8260 [No email address provided]

UNITED STATES DISTRICT 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 (SMB) SIPA LIQUIDATION (Substantively consolidated)
AARON BLECKER, et al., Appellants, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1236 (PAE)
DIANA MELTON TRUST, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1151 (PAE)

EDWARD A. ZRAICK, JR., et al., Appellants, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1195 (PAE)
ELLIOT G. SAGOR, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1263 (PAE)
MICHAEL C. MOST, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1223

APPENDIX ON BEHALF OF APPELLEE IRVING H. PICARD, TRUSTEE
VOLUME VII OF VII (PAGES T. App. 173 - T. App. 191)

BAKER HOSTETLER LLP
David J. Sheehan
Seanna R. Brown
Amy E. Vanderwal
45 Rockefeller Plaza
14th Floor
New York, NY 10111
Telephone: 212.589.4200

Attorneys for Appellee

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (SMB) SIPA LIQUIDATION (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	

DECLARATION OF KEVIN H. BELL IN SUPPORT OF THE REPLY MEMORANDUM OF LAW OF THE SECURITIES INVESTOR PROTECTION CORPORATION IN SUPPORT OF THE TRUSTEE'S DETERMINATIONS REGARDING INTER-ACCOUNT TRANSFERS

Kevin H. Bell hereby declares:

1. I am Senior Associate General Counsel for Dispute Resolution at the Securities Investor Protection Corporation ("SIPC"), located at 805 15th Street, N.W., Suite 800, Washington, DC 20005.

2. As an attorney of record, I am fully familiar with this case and the facts set forth herein. I submit this Declaration to place before this Court true and correct copies of documents in support of the Reply Memorandum of SIPC, filed in support of the motion by Irving Picard, as trustee ("Trustee") for the liquidation of Bernard L. Madoff Investment Securities LLC

("BLMIS") for entry of an order authorizing and approving the Trustee's determination of claims regarding inter-account transfers.

3. Attached hereto as **Exhibit A** is a true and correct copy of an attestation by the SEC stating that as of January 19, 1960, Bernard L. Madoff, Registrant Number 8-8132, was registered as a broker-dealer with the United States Securities and Exchange Commission ("SEC").

4. Attached hereto as **Exhibit B** is a true and correct copy of the Form BD Amendment, dated January 12, 2001, filed by BLMIS, SEC Registrant Number 8-8132. Included in Exhibit B is an attestation by the SEC to the authenticity of the document.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 6, 2014, in Washington, DC.

/s/ Kevin H. Bell
Kevin H. Bell

UNITED STATES OF AMERICA

SECURITIES AND EXCHANGE COMMISSION

ATTESTATION

I HEREBY ATTEST

that:

Commission's records reflect that a registration statement on Form BD, application as a broker-dealer, was received in this Commission under the name of Bernard L. Madoff (later known as Bernard L. Madoff Investment Securities LLC), File No. 008-08132, pursuant to the provisions of the Securities Exchange Act of 1934, and said registration was declared effective on January 19, 1960.

on file in this Commission

06/06/2014

Date

LARRY MILLS

Digitally signed by LARRY MILLS
DN: c=US, o=U.S. Government, ou=Securities and Exchange Commission, cn=LARRY MILLS, 0.9.2342.19200300.100.1.1=50001000026514
Date: 2014.06.06 15:07:07 -04'00'

Larry Mills, Management and Program Analyst

It is hereby certified that the Secretary of the U.S. Securities and Exchange Commission, Washington, DC, which Commission was created by the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is official custodian of the records and files of said Commission and was such official custodian at the time of executing the above attestation, and that he/she, and persons holding the positions of Deputy Secretary, Assistant Director, Records Officer, Branch Chief of Records Management, and the Program Analyst for the Records Officer, or anyone of them, are authorized to execute the above attestation.

For the Commission

Kevin M. O'Neill

Deputy Secretary

SEC 334 (9-12)

UNITED STATES OF AMERICA

SECURITIES AND EXCHANGE COMMISSION

ATTESTATION

I HEREBY ATTEST

that:

Attached is a copy of an amendment to Form BD, uniform application for broker-dealer registration, received in this Commission on January 12, 2001, under the name Bernard L. Madoff Investment Securities LLC, File No. 008-08132, pursuant to the provisions of the Securities Exchange Act of 1934.

on file in this Commission

06/05/2014

Date

LARRY MILLS

Digitally signed by LARRY MILLS
DN: c=US, o=U.S. Government, ou=Securities and Exchange Commission, cn=LARRY MILLS, 0.9.2342.19200300.100.1.1=50001000026514
Date: 2014.06.05 11:41:47 -04'00'

Larry Mills, Management and Program Analyst

It is hereby certified that the Secretary of the U.S. Securities and Exchange Commission, Washington, DC, which Commission was created by the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is official custodian of the records and files of said Commission and was such official custodian at the time of executing the above attestation, and that he/she, and persons holding the positions of Deputy Secretary, Assistant Director, Records Officer, Branch Chief of Records Management, and the Program Analyst for the Records Officer, or anyone of them, are authorized to execute the above attestation.

For the Commission

Kevin M. O'Neill

Deputy Secretary

SEC 334 (9-12)

1

FORM BD
UNIFORM APPLICATION FOR BROKER-DEALER REGISTRATION

Primary Business Name: BERNARD L. MADOFF INVESTMENT SECURITIES LLC BD Number: 2625

BD - AMENDMENT

01/12/2001

BD - APPLICANT INFORMATION

OMB Number 3235-0012

Expires.....
Estimated average burden hours per:
Response.....2.75
Amendment.....0.33

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as a broker-dealer would violate the Federal securities laws and the laws of the *jurisdictions* and may result in disciplinary, administrative, injunctive or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

○ **APPLICATION** ◉ **AMENDMENT**

1. Exact name, principal business address, mailing address, if different, and telephone number of *applicant:*

A. **Full name of *applicant*(if sole proprietor, state last, first and middle name):**
BERNARD L. MADOFF INVESTMENT SECURITIES LLC

B. **IRS Empl. Ident. No.:**
13-1997126

C. (1) Name under which broker-dealer business primarily is conducted, if different from Item 1A.
BERNARD L. MADOFF INVESTMENT SECURITIES LLC

(2) List on Schedule D, Page 1, Section I, Other Business Names any other name by which the firm conducts business and where it is used.

D. If this filing makes a name change on behalf of the *applicant*, enter the new name and specify whether the name change is of the
☐ ***applicant* name (1A) or** ☐ **business name (1C):**
Please check above.

E. **Firm main address:** **(Do not use a P.O. Box)**

Number and Street 1:		Number and Street 2:	
885 THIRD AVENUE			
City:	**State:**	**Country:**	**Zip/Postal Code:**
NEW YORK	New York	UNITED STATES	10022

F. **Mailing Address, if different:**

Number and Street 1:	**Number and Street 2:**
885 THIRD AVENUE	

City:	State:	Country:	Zip/Postal Code:
NEW YORK	New York	UNITED STATES	10022

G. **Business Telephone Number:**
212-230-2424

H. **Contact Employee:**

Name:	Title:	Telephone Number:
PETER MADOFF	DIRECTOR OF TRADING/CHIEF COMPLIANCE OFFICER	212-230-2424

BD - EXECUTION

EXECUTION:
For the purposes of complying with the laws of the State(s) designated in Item 2 relating to either the offer or sale of securities or commodities, the undersigned and *applicant* hereby certify that the *applicant* is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s) or such other person designated by law, and the successors in such office, attorney for the *applicant* in said State(s), upon whom may be served any notice, process, or pleading in any action or *proceeding* against the *applicant* arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the laws of those State(s), and the *applicant* hereby consents that any such action or *proceeding* against the *applicant* may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if *applicant* were a resident in said State(s) and had lawfully been served with process in said State(s).

The *applicant* consents that service of any civil action brought by or notice of any *proceeding* before the Securities and Exchange Commission or any *self-regulatory organization* in connection with the *applicant's* broker-dealer activities, or of any application for a protective decree filed by the Securities Investor Protection Corporation, may be given by registered or certified mail or confirmed telegram to the *applicant's* contact employee at the main address, or mailing address if different, given in Items 1E and 1F.

The undersigned, being first duly sworn, deposes and says that he/she has executed this form on behalf of, and with the authority of, said *applicant*. The undersigned and *applicant* represent that the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true and complete. The undersigned and *applicant* further represent that to the extent any information previously submitted is not amended such information is currently accurate and complete.

Date MM/DD/YYYY	Name of Applicant
01/12/2001	BERNARD L. MADOFF INVESTMENT SECURITIES LLC
Authorized Signatory	**Title**
PETER MADOFF	CHIEF COMPLIANCE OFFICER

Subscribed and sworn before me this _____ day of _____, _____ by
Year

_____
Notary Public
My commission expires _____ County of _____ State of _____

BD - SECURITIES AND EXCHANGE COMMISSION

2. Indicate by checking the appropriate box(es) each governmental authority, organization, or *jurisdiction* in which the *applicant* is registered or registering as a broker-dealer. ☑

If *applicant* is registered or registering with the SEC, check here and answer Items 2A through 2D below.

	YES	NO
A. Is *applicant* registered or registering as a broker-dealer under Section 15(b) or Section 15B of the Securities Exchange Act of 1934?	◉	○
B. Is *applicant* registered or registering as a broker-dealer under Section 15(b) of the Securities Exchange Act of 1934 and also acting or intending to act as a government securities broker or dealer?	○	◉
C. Is *applicant* registered or registering solely as a government securities broker or dealer under Section 15C of the Securities Exchange Act of 1934? *Do not answer "yes" to Item 2C if applicant answered "yes" to Item 2A or Item 2B.*	○	◉
D. Is *applicant* ceasing its activities as a government securities broker or dealer?	○	◉

If applicant answers "yes" to Items 2A and 2D, applicant expressly consents to the withdrawal of its registration as a government securities broker or dealer under Section 15C of the Securities Exchange Act of 1934. See "Instructions."

SECURITY FUTURES PRODUCTS ACTIVITIES

(Note: The field below is reserved exclusively for the reporting of single stock futures activities by registered broker-dealers. This field cannot be utilized until the SEC approves rules relating to the form and content of such reporting.)

BD - SRO / JURISDICTION

BD - SELF REGULATORY ORGANIZATIONS

☑ NASD	☐ ARCA	☐ CBOE	☐ ISE	☐ NYSE
☐ AMEX	☐ BX	☐ CHX	☑ NSX	☐ PHLX

BD - JURISDICTION

☑ Alabama	☑ Illinois	☑ Montana	☐ Puerto Rico
☑ Alaska	☑ Indiana	☐ Nebraska	☑ Rhode Island
☑ Arizona	☑ Iowa	☑ Nevada	☑ South Carolina
☑ Arkansas	☑ Kansas	☑ New Hampshire	☑ South Dakota
☑ California	☑ Kentucky	☑ New Jersey	☑ Tennessee
☑ Colorado	☑ Louisiana	☑ New Mexico	☑ Texas
☑ Connecticut	☑ Maine	☑ New York	☑ Utah
☑ Delaware	☑ Maryland	☑ North Carolina	☑ Vermont
☑ District of Columbia	☑ Massachusetts	☑ North Dakota	☐ Virginia
☑ Florida	☑ Michigan	☑ Ohio	☑ Washington
☑ Georgia	☑ Minnesota	☑ Oklahoma	☑ West Virginia
☑ Hawaii	☑ Mississippi	☑ Oregon	☑ Wisconsin
☑ Idaho	☑ Missouri	☑ Pennsylvania	☑ Wyoming

BD - LEGAL STATUS

3. A. Indicate legal status of *applicant*:

○ **Corporation** ◉ **Sole Proprietorship** ○ **Other *(specify)***

○ **Partnership** ○ **Limited Liability Company**

B. Month *applicant's* fiscal year ends:
OCTOBER

C. If other than a sole proprietor, indicate date and place *applicant* obtained its legal status (i.e., state or country where incorporated, where partnership agreement was filed, or where *applicant* entity was formed):

State of formation: **Country of formation:** **Date of formation:** MM/DD/YYYY

Schedule A, Direct Owners and Executive Officers Section and, if applicable, Schedule B, Indirect Owners Section must be completed as part of all initial applications. Amendments to these schedules must be provided on Schedule C.

4. If *applicant* is a sole proprietor, state full residence address and Social Security Number.

Social Security Number:
xxx-xx-xxxx

Number and Street 1:	**Number and Street 2:**		
133 EAST 64TH STREET			
City:	**State:**	**Country:**	**Zip/Postal Code:**
NEW YORK	**New York**	**UNITED STATES OF AMERICA**	**10021**

BD - SUCCESSION

	YES	NO
5. Is *applicant* at the time of this filing *succeeding* to the business of a currently registered broker-dealer?	◉	○

Do not report previous successions already reported on Form BD.

If "Yes," contact CRD prior to submitting form; complete appropriate items on Schedule D, Page 1, Section III.

BD - ARRANGEMENTS

	Yes	No
6. Does *applicant* hold or maintain any funds or securities or provide clearing services for any other broker or dealer?	○	◉
7. Does *applicant* refer or introduce customers to any other broker or dealer?	○	◉

If "yes," complete appropriate items on Schedule D, Page 1, Section IV, Arrangement Detail.

8. Does *applicant* have any arrangement with any other *person*, firm, or organization under which:

A. any books or records of *applicant* are kept or maintained by such other *person*, firm or organization?	○	◉
B. accounts, funds, or securities of the *applicant* are held or maintained by such other *person*, firm, or organization?	○	◉

C. accounts, funds, or securities of customers of the *applicant* are held or maintained by such other *person*, firm, or organization? ○ ◉

For purposes of 8B and 8C, do not include a bank or satisfactory control location as defined in paragraph(c) of Rule 15c3-3 under the Securities Exchange Act of 1934 (17 CFR 240. 15c3-3). If "Yes" to any part of Item 8, complete appropriate items on Schedule D, Page 1, Section IV, Arrangement Detail.

---

9. Does any *person* not named in Item 1 or Schedules A, B, or C, directly or indirectly:

A. *control* the management or policies of the *applicant* through agreement or otherwise? ○ ◉

B. wholly or partially finance the business of *applicant*? ○ ◉

Do not answer "yes" to 9B if the person finances the business of the applicant through: 1) a public offering of securities made pursuant to the Securities Act of 1933; 2) credit extended in the ordinary course of business by suppliers, banks, and others; or 3) a satisfactory subordination agreement, as defined in Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240. 15c3-1).
If "Yes" to any part of Item 9, complete appropriate items on Schedule D, Page 1, Section IV, Arrangement Detail.

BD - BUSINESS AFFILIATES

BD - Control Affiliates

YES NO

10. A. Directly or indirectly, does *applicant control*, is *applicant controlled* by, or is *applicant* under common *control* with, any partnership, corporation, or other organization that is engaged in the securities or investment advisory business? ◉ ○

If "Yes" to Item 10A, complete appropriate items on Schedule D, Page 2, Section V, Firm Affiliates.

B. Directly or indirectly, is *applicant controlled* by any bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank? ○ ◉

If "Yes" to Item 10B, complete appropriate items on Schedule D, Page 3, Section VI, Bank Affiliates.

BD - DISCLOSURE QUESTIONS

11. Use the appropriate DRP for providing details to "yes" answers to the questions in Item 11. Refer to the Explanation of Terms section of Form BD Instructions for explanations of italicized terms.

CRIMINAL DISCLOSURE

YES NO

A. In the past ten years has the *applicant* or a *control affiliate*:

(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any *felony*? ○ ◉

(2) been *charged* with any *felony*? ○ ◉

B. In the past ten years has the *applicant* or a *control affiliate*:

(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving*: investments or an *investment-related* business, ○ ◉

or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?

(2) been *charged* with a *misdemeanor* specified in 11B(1)? ○ ◉

REGULATORY ACTION DISCLOSURE

	YES	NO
C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:		
(1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?	○	◉
(2) *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of its regulations or statutes?	○	◉
(3) *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	○	◉
(4) entered an *order* against the *applicant* or a *control affiliate* in connection with an *investment-related* activity?	○	◉
(5) imposed a civil money penalty on the *applicant* or a *control affiliate*, or *ordered* the *applicant* or a *control affiliate* to cease and desist from any activity?	○	◉
D. Has any other federal regulatory agency, any state regulatory agency, or *foreign financial regulatory authority*:		
(1) ever *found* the *applicant* or a *control affiliate* to have made a false statement or omission or been dishonest, unfair, or unethical?	○	◉
(2) ever *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes?	○	◉
(3) ever *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	○	◉
(4) in the past ten years, entered an *order* against the *applicant* or a *control affiliate* in connection with an *investment-related* activity?	○	◉
(5) ever denied, suspended, or revoked the *applicant*'s or a *control affiliate*'s registration or license or otherwise, by *order*, prevented it from associating with an *investment-related* business or restricted its activities?	○	◉
E. Has any *self-regulatory organization* or commodities exchange ever:		
(1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?	○	◉
(2) *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a *"minor rule violation"* under a plan approved by the U.S. Securities and Exchange Commission)?	◉	○
(3) *found* the *applicant* or a *control affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	○	◉
(4) disciplined the *applicant* or a *control affiliate* by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?	○	◉
F. Has the *applicant's* or a *control affiliate's* authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?	○	◉
G. Is the *applicant* or a *control affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of 11C, D, or E?	○	◉

CIVIL JUDICIAL ACTION DISCLOSURE

	YES	NO
H. (1) Has any domestic or foreign court:		
(a) in the past ten years, *enjoined* the *applicant* or a *control affiliate* in connection with any *investment-related* activity?	○	◉
(b) ever *found* that the *applicant* or a *control affiliate* was *involved* in a violation of *investment-related* statutes or regulations?	○	◉
(c) ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against the *applicant* or *control affiliate* by a state or *foreign financial regulatory authority*?	○	◉

(2) Is the *applicant* or a *control affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of 11H(1)?	○	◉

FINANCIAL DISCLOSURE

	YES	NO
I. In the past ten years has the *applicant* or a *control affiliate* of the *applicant* ever been a securities firm or a *control affiliate* of a securities firm that:		
(1) has been the subject of a bankruptcy petition?	○	◉
(2) has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?	○	◉
J. Has a bonding company ever denied, paid out on, or revoked a bond for the *applicant*?	○	◉
K. Does the *applicant* have any unsatisfied judgments or liens against it?	○	◉

BD - TYPES OF BUSINESS

12. Check types of business engaged in (or to be engaged in, if not yet active) by *applicant*. Do not check any category that accounts for (or is expected to account for) less than 1% of annual revenue from the securities or investment advisory business.

A.	Exchange member engaged in exchange commission business other than floor activities.	☐ **EMC**
B.	Exchange member engaged in floor activities.	☐ **EMF**
C.	Broker or dealer making inter-dealer markets in corporate securities over-the-counter.	☑ **IDM**
D.	Broker or dealer retailing corporate equity securities over-the-counter.	☐ **BDR**
E.	Broker or dealer selling corporate debt securities.	☐ **BDD**
F.	Underwriter or selling group participant (corporate securities other than mutual funds).	☐ **USG**
G.	Mutual fund underwriter or sponsor.	☐ **MFU**
H.	Mutual fund retailer.	☐ **MFR**
I.	1. U.S. government securities dealer.	☐ **GSD**
	2. U.S. government securities broker.	☐ **GSB**
J.	Municipal securities dealer.	☐ **MSD**
K.	Municipal securities broker.	☐ **MSB**
L.	Broker or dealer selling variable life insurance or annuities.	☐ **VLA**
M.	Solicitor of time deposits in a financial institution.	☐ **SSL**
N.	Real estate syndicator.	☐ **RES**
O.	Broker or dealer selling oil and gas interests.	☐ **OGI**
P.	Put and call broker or dealer or option writer.	☐ **PCB**
Q.	Broker or dealer selling securities of only one issuer or associate issuers (other than mutual funds).	☐ **BIA**

R.	Broker or dealer selling securities of non-profit organizations (e.g., churches, hospitals).	☐ NPB
S.	Investment advisory services.	☐ IAD
T.	1. Broker or dealer selling tax shelters or limited partnerships in primary distributions.	☐ TAP
	2. Broker or dealer selling tax shelters or limited partnerships in the secondary market.	☐ TAS
U.	Non-exchange member arranging for transactions in listed securities by exchange member.	☐ NEX
V.	Trading securities for own account.	☑ TRA
W.	Private placement of securities.	☐ PLA
X.	Broker or dealer selling interests in mortgages or other receivables.	☐ MRI
Y.	Broker or dealer involved in a networking, kiosk or similar arrangement with a:	
	1. bank, savings bank or association, or credit union.	☐ BNA
	2. insurance company or agency	☐ INA
Z.	Other *(give details on Schedule D, Page 1, Section II, Other Business)*	☑ OTH

	YES	NO
13. A. Does *applicant* effect transactions in commodity futures, commodities or commodity options as a broker for others or as a dealer for its own account?	○	◉
B. Does *applicant* engage in any other non-securities business?	○	◉

If "yes", describe each other business briefly on Schedule D, Page 1, Section II, Other Business.

BD - DIRECT OWNERS/EXECUTIVE OFFICERS

Are there any indirect owners of the *applicant* required to be reported on Schedule B?

○ **Yes** ◉ **No**

Ownership Codes:	**NA - less than 5%**	**B - 10% but less than 25%**	**D - 50% but less than 75%**
	A - 5% but less than 10%	**C - 25% but less than 50%**	**E - 75% or more**

Full Legal Name	DE/FE/I	Title or Status	Date Acquired	Own. Code	Control Person	PR	CRD #(or S.S.No., IRS Tax #, Emp. ID)
MADOFF, BERNARD LAWRENCE	I	SOLE MEMBER	01/2001	E	Y	N	316687

MADOFF, PETER I BARNETT	DIRECTOR OF TRADING/CHIEF COMPLIANCE OFFICER	06/1969	NA	Y	N	316688

BD - INDIRECT OWNERS

No Information Filed

BD Schedule C - Amendments to Schedules A & B

In the Type of Amd. column, indicate "A" (addition), "D" (deletion), or "C" (change of information about the same *person*).

Ownership Codes are: **NA** - less than 5% **A** - 5% but less than 10% **B** - 10% but less than 25% **C** - 25% but less than 50% **D** - 50% but less than 75% **E** - 75% or more **F** - Other General Partners

List below all changes to Schedule A: (DIRECT OWNERS AND EXECUTIVE OFFICERS)

Full Legal Name	DE/FE/I	Type of Amd.	Title or Status	Date Acquired	Own. Code	Control Person	PR	CRD # (or SSN, IRS Tax #, Emp. ID)

No Information Filed

List below all changes to Schedule B: (INDIRECT OWNERS)

Full Legal Name	DE/FE/I	Type of Amd.	Entity in Which Interest is Owned	Status	Date Acquired	Own. Code	Control Person	PR	CRD # (or SSN, IRS Tax #, Emp. ID)

No Information Filed

BD - OTHER BUSINESS NAMES

No Information Filed

BD - OTHER BUSINESS

Briefly describe any other business (Item 12Z).
BERNARD L. MADOFF IS A MEMBER OF THE CINCINNATI STOCK EXCHANGE AND IS A DESIGNATED MARKET-MAKER ON THAT EXCHANGE, ENGAGED IN INTER-DEALER MARKET-MAKING ACTIVITIES.

Briefly describe any other non-securities business (Item 13B).

BD - SUCCESSIONS

Date of Succession: MM/DD/YYYY
01/01/2001

Name of Predecessor:
BERNARD L. MADOFF

Firm CRD Number
2625

IRS Employer Identification Number (if any)
13-1997126

SEC File Number (if any)
8- 08132

Briefly describe details of the *succession* including any assets or liabilities not assumed by the *successor*.

EFFECTIVE JANUARY 1, 2001, PREDECESSOR WILL TRANSFER TO SUCCESSOR ALL OF PREDECESSOR'S ASSETS AND LIABILITIES, RELATED TO PREDECESSOR'S BUSINESS. THE TRANSFER WILL NOT RESULT IN ANY CHANGE IN OWNERSHIP OR CONTROL.

BD - ARRANGEMENTS / CONTROL PERSONS / FINANCING

No Information Filed

BD - AFFILIATES

Business

The details supplied relate to:

Partnership, Corporation, or Organization Name | **CRD Number (if any)**
MADOFF SECURITIES INTERNATIONAL LTD.

The Partnership, Corporation, or Organization

○ ***controls applicant***

◉ **is *controlled* by *applicant***

○ **is under common *control* with *applicant***

Business Address

Street 1 | **Street 2**
12 BERKELEY STREET

City | **State** | **Country** | **Zip/Postal Code**
MAYFAIR | LONDON | W1X58AD

Effective Date (MM/DD/YYYY) | **Termination Date (MM/DD/YYYY)**
12/31/1998

Is Partnership, Corporation or Organization a foreign entity?

◉ **Yes** ○ **No**

If Yes, provide country of domicile or incorporation
UNITED KINGDOM

Activities of this Partnership, Corporation, or Organization:

Securities Activities ◉ **Yes** ○ **No**

Investment Advisory Activities ○ **Yes** ◉ **No**

Briefly describe the *control* relationship

BERNARD L. MADOFF OWNS 30.8% OF MADOFF SECURITIES INTERNATIONAL LTD., A REGISTERED COMPANY IN THE UNITED KINGDOM. THE COMPANY IS A MEMBER OF THE LONDON STOCK EXCHANGE.

BD - BRANCHES

No Information Filed

BD - CRIMINAL DRP

No Information Filed

BD - REGULATORY ACTION DRP

This Disclosure Reporting Page (DRP BD) is an ○ **INITIAL OR** ◉ **AMENDED** response used to report details for affirmative responses to ***Items 11C, 11D, 11E, 11F or 11G*** of Form BD;

Check item(s) being responded to:

Regulatory Action

☐ **11C(1)**	☐ **11C(5)**	☐ **11D(4)**	☐ **11E(3)**
☐ **11C(2)**	☐ **11D(1)**	☐ **11D(5)**	☐ **11E(4)**

☐ **11C(3)**	☐ **11D(2)**	☐ **11E(1)**	☐ **11F**
☐ **11C(4)**	☐ **11D(3)**	☑ **11E(2)**	☐ **11G**

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items 11C, 11D, 11E, 11F or 11G. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details to each action on a separate DRP.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

- ◉ **The *Applicant***
- ○ ***Applicant* and one or more *control affiliates***
- ○ **One or more *control affiliates***

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).
If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

☐ **This DRP should be removed from the BD record because the *control affiliate(s)* are no longer associated with the BD.**

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U4) or BD DRP to the CRD System for the event? If the answer is "Yes," no other information on this DRP must be provided.

○ **Yes** ◉ **No**

NOTE: The completion of this form does not relieve the *control affiliate* of its obligation to update its CRD records.

PART II

1. Regulatory Action initiated by:

○ **SEC** ○ **Other Federal** ○ **State** ◉ ***SRO*** ○ **Foreign**
(Full name of regulator, *foreign financial regulatory authority*, federal, state, or *SRO*)
NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

2. Principal Sanction:
Censure
Other Sanctions:

3. Date Initiated (MM/DD/YYYY):
   07/01/1963 ◉ **Exact** ○ **Explanation**
   If not exact, provide explanation:

4. Docket/Case Number:
   COMPLAINT NO. NY-802

5. *Control Affiliate* Employing Firm when activity occurred which led to the regulatory action (if applicable):

6. Principal Product Type:
   No Product
   Other Product Types:

7. Describe the allegations related to this regulatory action. (The information must fit within the space provided.)
   VIOLATION OF NASD RULES 2230 AND 2110

8. Current status ? ○ **Pending** ○ **On Appeal** ◉ **Final**

9. If on appeal, regulatory action appealed to: (SEC, *SRO*, Federal or State Court) and Date Appeal Filed:

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 13 only.

10. How was matter resolved:
    Decision

11. Resolution Date (MM/DD/YYYY):
    11/08/1963 ◉ **Exact** ○ **Explanation**
    If not exact, provide explanation:

12. **Resolution Detail:**

    A. Were any of the following Sanctions Ordered? (Check all appropriate items):

    ☑ **Monetary/Fine** — **Amount: $** 500.00
    ☐ **Revocation/Expulsion/Denial**
    ☑ **Censure**
    ☐ **Bar**
    ☐ **Disgorgement/Restitution**
    ☐ **Cease and Desist/Injunction**
    ☐ **Suspension**

    B. Other Sanctions Ordered:

    C. Sanction detail: if suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against *applicant* or *control affiliate*, date paid and if any portion of penalty was waived:
    FINED IN THE AMOUNT OF $500 AND ASSESSED COSTS OF THE PROCEEDING IN THE AMOUNT OF $60.65. THE FINE AND COSTS OF THE PROCEEDINGS WERE PAID IN FULL IN NOVEMBER 1963.

13. Provide a brief summary of details related to the action status and (or) disposition and include relevant terms, conditions and dates. (The information must fit within the space provided.)
THE FINDING OF A VIOLATION OF NASD RULE 2230 WAS LIMITED TO A TECHNICAL INFRACTION.

This Disclosure Reporting Page (DRP BD) is an ○ **INITIAL OR** ◉ **AMENDED** response used to report details for affirmative responses to ***Items 11C, 11D, 11E, 11F or 11G*** of Form BD;

Check item(s) being responded to:

Regulatory Action

☐ **11C(1)**	☐ **11C(5)**	☐ **11D(4)**	☐ **11E(3)**
☐ **11C(2)**	☐ **11D(1)**	☐ **11D(5)**	☐ **11E(4)**
☐ **11C(3)**	☐ **11D(2)**	☐ **11E(1)**	☐ **11F**
☐ **11C(4)**	☐ **11D(3)**	☑ **11E(2)**	☐ **11G**

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items 11C, 11D, 11E, 11F or 11G. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details to each action on a separate DRP.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

◉ **The *Applicant***

○ ***Applicant* and one or more *control affiliates***

○ **One or more *control affiliates***

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).
If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

☐ **This DRP should be removed from the BD record because the *control affiliate(s)* are no longer associated with the BD.**

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U4) or BD DRP to the CRD System for the event? If the answer is "Yes," no other information on this DRP must be provided.

○ **Yes** ◉ **No**

NOTE: The completion of this form does not relieve the *control affiliate* of its obligation to update its CRD records.

PART II

1. Regulatory Action initiated by:

   ○ **SEC** ○ **Other Federal** ○ **State** ◉ ***SRO*** ○ **Foreign**
   (Full name of regulator, *foreign financial regulatory authority*, federal, state, or *SRO*)
   NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

2. Principal Sanction:
   Other
   Other Sanctions:
   FINE

3. Date Initiated (MM/DD/YYYY):

   11/22/1974 ○ **Exact** ◉ **Explanation**
   If not exact, provide explanation:
   INFORMATION NO LONGER AVAILABLE DUE TO AGE OF THE COMPLAINT.

4. Docket/Case Number:
   N-NV-86

5. *Control Affiliate* Employing Firm when activity occurred which led to the regulatory action (if applicable):

6. Principal Product Type:
   No Product
   Other Product Types:

7. Describe the allegations related to this regulatory action. (The information must fit within the space provided.)
   INFORMATION NO LONGER AVAILABLE DUE TO AGE OF THE COMPLAINT.

8. Current status ? ○ **Pending** ○ **On Appeal** ◉ **Final**

9. If on appeal, regulatory action appealed to: (SEC, *SRO*, Federal or State Court) and Date Appeal Filed:

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 13 only.

10. How was matter resolved:
    Decision

11. Resolution Date (MM/DD/YYYY):

    11/19/1974 ◉ **Exact** ○ **Explanation**
    If not exact, provide explanation:

12. **Resolution Detail:**

    A. Were any of the following Sanctions Ordered? (Check all appropriate items):

    ☑ **Monetary/Fine** — **Amount: $** 25.00
    ☐ **Revocation/Expulsion/Denial**
    ☐ **Disgorgement/Restitution**
    ☐ **Censure**
    ☐ **Cease and Desist/Injunction**
    ☐ **Bar**
    ☐ **Suspension**

B. Other Sanctions Ordered:

C. Sanction detail: If suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against *applicant* or *control affiliate*, date paid and if any portion of penalty was waived:
FINE IN THE AMOUNT OF $25.00. NO OTHER INFORMATION IS AVAILABLE DUE TO THE AGE OF THE COMPLAINT.

13. Provide a brief summary of details related to the action status and (or) disposition and include relevant terms, conditions and dates. (The information must fit within the space provided.)

BD - CIVIL JUDICIAL DRP

No Information Filed

BD - BANKRUPTCY DRP

No Information Filed

BD - BOND DRP

No Information Filed

BD - JUDGMENT LIEN DRP

No Information Filed

UNITED STATES DISTRICT 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 (SMB) SIPA LIQUIDATION (Substantively consolidated)
AARON BLECKER, et al., Appellants, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1236 (PAE)
DIANA MELTON TRUST, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1151 (PAE)

EDWARD A. ZRAICK, JR., et al., Appellants, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1195 (PAE)
ELLIOT G. SAGOR, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1263 (PAE)
MICHAEL C. MOST, Appellant, v. IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Appellee.	Case No. 15 CV 1223

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, **Sarah B. Roberts**, being duly sworn, depose and say: I am more than eighteen years old and not a party to this action. My business address is Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, NY 10111.

On May 27, 2015, I served the *Brief of Appellee Irving H. Picard, Trustee, in Support of Order Affirming Trustee's Methodology for Inter-Account Transfers* to be served upon counsel for those parties who receive electronic service through ECF and by electronic mail to those parties as set forth on the attached Schedule A.

/s/Sarah B. Roberts
SARAH B. ROBERTS

Sworn to before me this
27th day of May, 2015

/s/Sonya M. Graham
Notary Public
Sonya M. Graham
Notary Public, State of New York
No. 01GR6133214
Qualified in Westchester County
Commission Expires: Sept.12, 2017

SCHEDULE A

Attorneys for Appellants in Blecker, et al. v.Picard, Case No. 15-cv-1236
Helen Davis Chaitman
Becker & Poliakoff LLP
45 Broadway, 8th Floor
New York, NY 10006
hchaitman@bplegal.com

Attorneys for Appellant in Diana Melton Trust v. Picard, Case No. 15-cv-1151
Gaytri D. Kachroo
Kachroo Legal Services
245 Park Avenue, 39th Floor
New York, NY 10167
gkachroo@kachroolegal.com

Attorneys for Appellants in Zraick, et al. v. Picard, Case No. 15-cv-1195
Peter S. Partee, Sr.
Robert A. Rich
Hunton & Williams LLP
200 Park Avenue
New York, New York 10166-0136
ppartee@hunton.com; rrich2@hunton.com

Attorneys for Appellant in Michael Most v. Picard, Case No. 15-cv-01223
Paula J. Warmuth
Glenn P. Warmuth,
Stim & Warmuth, P.C.
2 Eighth Street, Farmingville, NY 11738
pjw@stim-warmuth.com
gpw@stim-warmuth.com

Appellant in Elliot G. Sagor v. Picard, Case No. 15-cv-01263
Elliot G. Sagor, Esq.
600 Third Avenue
25th Floor
New York, New York 10016
sagor@mintzandgold corn

Attorneys for Amici-Defendants
Richard A. Kirby
Laura K. Clinton
K&L GATES LLP
1601 K Street
Washington D.C. 20006
richard.kirby@klgates.com