UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): _____ Caption [use short title] Picard v. Banque Cantonale Vaudoise

Motion for: Permission To Appeal Pursuant to 28 U.S.C. § 158(d)(2)(A)

Set forth below precise, complete statement of relief sought:

Irving H. Picard, Appellant-Petitioner, seeks permission for leave to appeal in this Court from a final judgment of the Bankruptcy Court, following the joint certification of that judgment by all parties to this appeal pursuant to 28 U.S.C. § 158(d)(2)(A)(iii).

MOVING PARTY: Irving H. Picard
- ☐ Plaintiff ☐ Defendant
- ☑ Appellant/Petitioner ☐ Appellee/Respondent

OPPOSING PARTY: Banque Cantonale Vaudoise

MOVING ATTORNEY: David J. Sheehan

OPPOSING ATTORNEY: John F. Zulack

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Court-Judge/Agency appealed from: Honorable Stuart M. Bernstein, U.S. Bankruptcy Court for the Southern District of New York

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☑ Yes ☐ No (explain): _____

Opposing counsel's position on motion:
☑ Unopposed ☐ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:
☐ Yes ☐ No ☑ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this Court? ☐ Yes ☐ No

Requested return date and explanation of emergency: _____

Is oral argument on motion requested? ☐ Yes ☑ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☑ No If yes, enter date: _____

Signature of Moving Attorney: /s/ David J. Sheehan **Date:** April 28, 2017 Service by: ☐ CM/ECF ☑ Other [Attach proof of service]

17-_____

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

IN RE: BERNARD L. MADOFF INVESTMENT SECURITIES LLC,

Debtor.

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

Appellant-Petitioner,

—against—

BANQUE CANTONALE VAUDOISE,

Appellee-Respondent.

FROM A FINAL JUDGMENT OF THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
12-01694

PETITION OF APPELLANT IRVING H. PICARD FOR PERMISSION TO APPEAL PURSUANT TO 28 U.S.C. § 158(d)(2)(A)

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Pursuant to 28 U.S.C. § 158(d)(2) and Federal Rule of Appellate Procedure 5, Irving H. Picard, as trustee ("Trustee") for the substantively consolidated estate of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.* ("SIPA"), and the estate of Bernard L. Madoff ("Madoff"), respectfully petitions this Court for permission to appeal from the final judgments and related orders entered by the United States Bankruptcy Court for the Southern District of New York in 86 adversary actions by the Trustee to recover property fraudulently and preferentially transferred from BLMIS prior to its liquidation.[1] The parties to these actions certified that direct appeal is warranted to resolve controlling questions of law concerning the application of SIPA's and the Bankruptcy Code's avoidance and recovery provisions to property involved in transactions with extraterritorial components and thereby advance the progress of these actions and the overall BLMIS liquidation.[2]

[1] The 86 adversary actions are identified on Exhibit 1 to this Petition.

[2] The Trustee and respondents filed Bankruptcy Form 424 in each of these 86 adversary actions certifying each judgment of the Bankruptcy Court. A copy of the pertinent Form 424 is included with each individual submission.

INTRODUCTION

Years after the Trustee brought these actions seeking to recover customer property that was improperly dissipated from BLMIS prior to its failure, the most basic questions regarding whether and in what circumstances SIPA and the Bankruptcy Code permit the recovery of property spirited overseas remain unresolved. That is why the Trustee and the defendants in these 86 adversary actions, despite disagreeing on the resolution of those questions, jointly certified that direct appeal to this Court is warranted, so that they can be answered definitively and these cases can be litigated to their conclusion without further delay.

This Court should permit direct appeal. First, the extraterritorial reach of SIPA and the Bankruptcy Code and the interpretation of those statutes in light of the comity of nations are pure questions of law that are controlling in these actions and that have resulted in conflicting decisions. Second, these appeals concern matters of great public importance: they represent the most significant outstanding portion of the initiative to recover assets for Madoff's victims, and the questions they present are central to the operation of bankruptcy law and financial markets. And, third, direct appeal will substantially advance the progress of these 86 actions—all in one fell swoop—while also advancing the conclusion of the broader Madoff recovery initiative. The district court having already rendered its judgment on the issues presented by these appeals, an appeal to that court would only further delay resolution of

these actions, prejudicing the Trustee's ability to recover property for the benefit of Madoff's victims.

Accordingly, the Trustee respectfully requests that the Court grant direct appeal.

QUESTIONS PRESENTED

1. Whether and in what circumstances SIPA and the Bankruptcy Code permit the recovery of property fraudulently transferred by the debtor when it has been subsequently transferred in transactions with allegedly extraterritorial components.

2. Whether the comity of nations independently bars recovery of such property as otherwise authorized by SIPA and the Bankruptcy Code.

BACKGROUND

Bernard L. Madoff operated the largest Ponzi scheme in history through BLMIS, and the Trustee was appointed to provide relief to Madoff's victims by recovering for equitable distribution as much as possible of the nearly $17.5 billion in investor principal that had been lost. *See generally In re Bernard L. Madoff Inv. Sec. LLC*, 654 F.3d 229 (2d Cir. 2011); *Picard v. JPMorgan Chase & Co. (In re Bernard L. Madoff Inv. Sec. LLC)*, 721 F.3d 54 (2d Cir. 2013). Operating as a brokerage firm, BLMIS held numerous customer accounts for numerous "feeder funds"—single-purpose investment vehicles that pooled their investors' assets to invest with BLMIS. Collectively, the feeder funds withdrew billions of

dollars in BLMIS customer property and then transferred it to their shareholders, managers, and service providers.

These appeals arise from adversary actions brought by the Trustee to avoid those fraudulent and preferential transfers and recover their proceeds for distribution to BLMIS customers. A SIPA trustee is empowered to recover fraudulently or preferentially transferred property that should have been held on behalf of a failed brokerage's customers and is also vested with the powers of a bankruptcy trustee to avoid transfers and recover property. 15 U.S.C. §§ 78fff-2(c)(3), 78fff-1(a). The defendants in these actions sought dismissal on the ground that the Trustee's claims are barred by the presumption against extraterritorial application of U.S. law.

The bankruptcy court (the Honorable Burton R. Lifland) rejected that defense in an action against a feeder-fund shareholder. *Picard v. Bureau of Labor Ins. (In re BLMIS)*, 480 B.R. 501 (Bankr. S.D.N.Y. 2012). Its decision held that the avoidance of fraudulent and preferential transfers, and recovery of the transferred property, do not involve an extraterritorial application of U.S. law, even where the initial and subsequent transferees may be located overseas, because the Code's "focus" is on the improper depletion of the (domestic) debtor's estate. *Id.* at 524–25. It also held that, in any instance, Congress clearly manifested its intent for the extraterritorial application of the Bankruptcy Code's recovery provisions by expressly defining "property of the estate" to include recovered property "wherever located and by whomever held," which

has long been understood to encompass property anywhere in the world. *Id.* at 526–27.

Defendants in other adversary actions moved the district court to withdraw its reference to the bankruptcy court "to determine whether SIPA and/or the Bankruptcy Code as incorporated by SIPA apply extraterritorially, permitting the Trustee . . . to recover from initial, immediate or mediate foreign transferees." *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Madoff Sec.)*, No. 12-mc-00115 (S.D.N.Y. June 7, 2012), ECF No. 167, at 2. The district court (the Honorable Jed S. Rakoff) withdrew the reference as to that issue, directed the parties to undertake common briefing on it, and then rendered a decision on July 6, 2014.

Breaking with the bankruptcy court's prior decision, the district court held that the "focus" of a recovery action pursuant to Bankruptcy Code Section 550(a) is the location of the transfer to the defendant, such that the recovery of property transferred from a foreign feeder fund to a foreign shareholder in that fund would entail an extraterritorial application of the law. *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Madoff Sec.)*, 513 B.R. 222, 227–28 (S.D.N.Y. 2014). But Section 550(a), it held, had no extraterritorial application because nothing in that specific provision explicitly authorized its extraterritorial application. *Id.* at 228. Accordingly, it concluded that "the Trustee . . . may not use section 550(a) to pursue recovery of purely foreign subsequent transfers." *Id.* at 231. It further held, in the alternative, that the comity of nations barred the Trustee's use of Section 550(a) to reach

property subject to certain foreign transfers, *id.* at 231–32—an issue for which the district court had not withdrawn the reference and that the defendants had not identified as a ground of dismissal in their joint motion to dismiss. The district court remanded the withdrawn actions to the bankruptcy court to carry out its decision. *Id.* at 232–33.

On remand, the defendants renewed their request for dismissal, and the bankruptcy court (the Honorable Stuart M. Bernstein) issued an omnibus decision on November 22, 2016. *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec.*, Adv. P. Nos. 08–01789, 11–02732, 2016 WL 6900689 (Bankr. S.D.N.Y. Nov. 22, 2016). It interpreted the district court's comity holding as barring the recovery of property that passed through foreign feeder funds that were the subject of foreign liquidation proceedings. *Id.* at *11–12. On that basis, it ordered dismissed claims involving the Fairfield Funds[3] (which were subject to liquidation proceedings in the British Virgin Islands), the Kingate Funds[4] (Bermuda and the BVIs), and Harley International (Cayman) Limited (Cayman Islands). *Id.* at *13–17. For the remaining actions, the bankruptcy court interpreted the district court's extraterritoriality holding as requiring dismissal of claims involving "purely foreign" subsequent transfers—*i.e.*, from a foreign account to a foreign account. *Id.* at *17, *19. On that basis, it dismissed most of the remaining claims, while allowing others to continue

[3] Fairfield Sentry Limited, Fairfield Sigma Limited, and Fairfield Lambda Limited.

[4] Kingate Global Fund Limited and Kingate Euro Fund Limited.

where the Trustee's allegations of domestic residency, operations, or bank accounts supported the inference of a domestic transfer. *Id.* at 25.

Subsequently, the Trustee and defendants subject to claims that the bankruptcy court had ordered dismissed consented to entry of final judgment by the bankruptcy court.[5] After the bankruptcy court entered its judgments, the Trustee appealed them, and all the parties to each action jointly certified pursuant to 28 U.S.C. § 158(d)(2) that direct appeal to this Court was warranted. The Trustee now petitions this Court to authorize direct appeal.

RELIEF SOUGHT

All parties to these appeals request that this Court authorize direct appeal of the judgments certified by the bankruptcy court pursuant to 28 U.S.C. § 158(d)(2). The Trustee ultimately seeks reversal of the bankruptcy court's decisions dismissing the Trustee's recovery actions on extraterritoriality and comity grounds.

STANDARD FOR PERMITTING DIRECT APPEAL

Pursuant to 28 U.S.C. § 158(d)(2), this Court has discretionary authority to hear direct appeals from bankruptcy court orders and judgments "that raise controlling questions of law, concern matters of public importance, and arise under circumstances where a prompt, determinative ruling might avoid

[5] In actions where claims remained against other defendants, the bankruptcy court entered judgment pursuant to Federal Rule of Civil Procedure 54(b).

needless litigation." *Weber v. United States Trustee*, 484 F.3d 154, 158 (2d Cir. 2007). The Court "will be most likely to exercise [that] discretion . . . where there is uncertainty in the bankruptcy courts" and in cases unlikely to benefit from "prior consideration in the district court." *Id.* at 161.

REASONS FOR PERMITTING DIRECT APPEAL

I. These Appeals Raise Controlling Questions of Law Concerning the Reach of Avoidance and Recovery Powers Under SIPA and the Bankruptcy Code

Direct appeal is warranted when a bankruptcy court order or judgment involves a "controlling question of law," just as under the interlocutory appeal provision of 28 U.S.C. § 1292(b). *Weber*, 484 F.3d at 158–59. Specifically, "(a) the appeal must concern a question 'of law,' (b) that question must be one that is 'controlling,' and (c) that controlling question of law must be one 'as to which there is substantial ground for difference of opinion.'" *Casey v. Long Island R.R. Co.*, 406 F.3d 142, 146 (2d Cir. 2005) (quoting 28 U.S.C. § 1292(b)).

These appeals present two controlling questions of law. The first is the application of SIPA's and the Bankruptcy Code's avoidance and recovery provisions to property that, after it has been fraudulently or preferentially transferred from the debtor's estate, has been subsequently transferred to third parties in transactions with allegedly extraterritorial components—*e.g.*, where a foreign feeder fund withdrew false proceeds from its BLMIS customer account and then transferred those proceeds to foreign shareholders. This is a question of law, involving the interpretation of SIPA and the Bankruptcy Code. *See*

Morrison v. Nat'l Australia Bank Ltd., 561 U.S. 247, 255 (2010) (explaining that extraterritorial application is a matter of statutory interpretation). It is controlling of whether the Trustee may maintain recovery actions against many of the shareholders, managers, and service providers of Madoff's feeder funds who profited from Madoff's fraud at the expense of his victims.

And there is substantial ground for difference of opinion on that question. Judge Lifland's and Judge Rakoff's decisions on the issue are perfectly opposed, and the Fourth Circuit has adopted the interpretation of the Code urged by the Trustee but rejected by Judge Rakoff. *In re French*, 440 F.3d 145, 151–52 (4th Cir. 2006) ("Congress thus demonstrated an affirmative intention to allow avoidance of transfers of foreign property that, but for a fraudulent transfer, would have been property of the debtor's estate."); *see also Weisfelner v. Blavatnik (In re Lyondell Chem. Co.)*, 543 B.R. 127, 154–55 (Bankr. S.D.N.Y. 2016) (following *French*); *In re Ampal-American Israel Corp.*, No. 12-13689 (SMB), 2017 WL 75750 (Bankr. S.D.N.Y. Jan. 9, 2017) (holding that the Code's "focus" is on the improper depletion of the debtor's estate and that the Code's recovery provision, but not its avoidance provisions, can be applied extraterritorially). No decision of this Court definitively resolves the issue.

The second question is whether the comity of nations bars the Trustee's recovery actions. Again, this is a question of law involving statutory interpretation. *See Maxwell Commc'n Corp. plc v. Societe Generale plc (In re Maxwell Commc'n Corp.)*, 93 F.3d 1036, 1047 (2d Cir. 1996). It is controlling of whether the Trustee may maintain recovery actions against the shareholders, managers,

and service providers of feeder funds that were subject to foreign liquidation proceedings. And the courts have differed in answering this question. Judge Rakoff's application of the comity of nations was premised on a decision of this Court holding that deference to British law was warranted when all the parties to allegedly preferential transfers made in London were themselves British. *See Maxwell*, 93 F.3d at 1051–52. By contrast, the Fourth Circuit has held that comity is no bar to avoidance and recovery where, as here, "the perpetrator and most of the victims of the fraudulent transfer" were located in the United States and "the conduct constituting the constructive fraud occurred in the United States." *French*, 440 F.3d at 149–50. *See also In re Kingate Mgmt. Ltd. Litig.*, No. 09-cv-5386 (DAB), 2016 WL 5339538, at *35 (S.D.N.Y. Sept. 21, 2016), *appeal docketed*, No. 16-3450 (2d Cir.) (rejecting comity argument made by Madoff feeder fund managers in suit brought by shareholders).

In addition, neither the district court nor the bankruptcy court required the defendants of the Trustee's recovery actions to identify a "true conflict" between American law and that of a foreign jurisdiction, while this Court has held that "[i]nternational comity comes into play only when there is [such] a conflict." *Maxwell*, 93 F.3d at 1049. It is the Trustee's position that *Maxwell*, among other decisions, controls this issue, but the lower courts plainly disagreed.

This Court's review is necessary to resolve the lower courts' conflicting views on these controlling questions of law.

II. These Appeals Concern a Matter of Public Importance: the Recovery of Billions in Fraudulently Transferred Property for the Benefit of Madoff's Victims

There can be no question that these appeals concern a matter of public importance. The Madoff fraud was one of the largest in history, and the Madoff recovery initiative's progress is commensurately important. Over 16,500 customer claims have been filed in the BLMIS liquidation, and the determination of these appeals will affect the rights not only of customers holding claims themselves, but also of many feeder-fund investors who claim entitlement to their share of any distributions to those funds.

In particular, the adversary actions at issue in these appeals collectively involve the largest sum outstanding in the recovery effort. To date, the Trustee has recovered over $11.5 billion of the $17.5 billion or so in customer property that was lost. These actions, if they are allowed to proceed and are successful, could augment the customer fund by as much as $4.2 billion—the outstanding, recoverable amount the feeder funds at issue withdrew from their BLMIS accounts—providing significant relief to Madoff's victims. Recovery of these funds is a crucial component of the recovery effort.

More broadly, the issues presented by these appeals are themselves important to the functioning of SIPA, bankruptcy law, and financial markets. Is the Bankruptcy Code ultimately powerless to enforce adherence to the priority scheme and principle of equal treatment that lie at its core when parties funnel assets through overseas transactions, as can be done at the touch of a button from a Manhattan office? Can a financial fraudster's enablers and

accomplices protect their ill-gotten gains by spiriting them away overseas? Do investors have to bear the risk that, if they forgo elaborate foreign structuring of their investment returns, they will not receive their fair share of customer property if a broker goes into liquidation? The Court's resolution of the two legal issues presented by these appeals will resolve these and many other important policy questions.

III. Direct Appeal Will Materially Advance the Progress of These Actions and the BLMIS Liquidation

All parties agree that direct appeal will materially advance the progress of these actions, which involve the same common questions of law. That is true in three distinct ways.

First, direct appeal will substantially advance resolution of the Trustee's actions that were dismissed by the bankruptcy court. Absent direct appeal, the Trustee will have no choice but to appeal to the district court. That court, however, already passed its judgment on the controlling questions of law presented by these appeals through withdrawal of its reference to the bankruptcy court on the extraterritoriality issue. Indeed, it is not apparent that the district court even has jurisdiction to review district court decisions rendered on withdrawal of the reference. *See* 28 U.S.C. § 158(a) (providing district courts jurisdiction only over appeals from *bankruptcy court* orders and judgments); c*f. In re Leslie Fay Cos., Inc.*, 222 B.R. 718, 719 (S.D.N.Y. 1998). An appeal to the district court, then, would serve only to impose further delay and expense on the parties, without bringing these disputes any closer to their

conclusion. That delay would be particularly damaging to the Trustee, the BLMIS estate, and Madoff's victims, given that much of the property the Trustee seeks in these actions is located overseas and is likely to become more difficult to recover as time passes.

Second, the bankruptcy court did not dispose of the Trustee's claims against all the defendants asserting an extraterritoriality defense. A direct appeal that clarifies the legal frameworks governing extraterritoriality and comity will avoid needless litigation by reducing the risk that a later decision on these controlling questions of law will require the parties to the remaining claims to start over again from the beginning.

Third, direct appeal will advance the Trustee's recovery efforts and liquidation of the BLMIS estate. Since Madoff's fraud arrest in December 2008, the Trustee has pursued avoidance and recovery actions against numerous parties and has recovered over $11 billion for distribution to victims of Madoff's fraud. But billions in customer property that were improperly dissipated from BLMIS remain in the possession of the defendants to these actions. Whether the Trustee can recover that property is the single most important question remaining in the liquidation of the BLMIS estate. Answering it definitively will substantially advance the progress of the Madoff recovery initiative.

CONCLUSION

For the foregoing reasons, the Court should grant this petition and authorize direct appeal of the bankruptcy court's judgments and orders.

Dated: April 28, 2017

Respectfully submitted,

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EXHIBIT 1

Adv. Pro. No.	Case
09-01161	Picard v. Ceretti
09-01239	Picard v. Fairfield Investment Fund, Ltd.
09-01364	Picard v. HSBC Bank PLC
10-04285	Picard v. UBS AG
10-04287	Picard v. Cardinal Management Inc.
10-05120	Picard v. Oréades SICAV
10-05311	Picard v. UBS AG
10-05345	Picard v. Citibank, N.A.
10-05346	Picard v. Merrill Lynch International
10-05348	Picard v. Nomura International plc
10-05351	Picard v. Banco Bilbao Vizcaya Argentaria, S.A.
10-05353	Picard v. Natixis S.A.
10-05355	Picard v. ABN AMRO Bank (Ireland) Ltd.
11-02149	Picard v. Banque Syz & Co., SA
11-02493	Picard v. Abu Dhabi Investment Authority
11-02537	Picard v. Orbita Capital Return Strategy
11-02538	Picard v. Quilvest Finance Ltd.
11-02539	Picard v. Meritz Fire & Insurance Co. Ltd.
11-02540	Picard v. Lion Global Investors Limited
11-02541	Picard v. First Gulf Bank
11-02542	Picard v. Parson Finance Panama S.A.
11-02551	Picard v. Delta National Bank & Trust
11-02553	Picard v. Unifortune Asset Management SGR SpA
11-02554	Picard v. National Bank of Kuwait S.A.K.
11-02568	Picard v. Cathay Life Insurance Co. LTD.
11-02569	Picard v. Barclays Bank (Suisse) S.A.
11-02570	Picard v. Banca Carige S.P.A.
11-02571	Picard v. Banque Privee Espirito Santo S.A.
11-02572	Picard v. Korea Exchange Bank
11-02573	Picard v. The Sumitomo Trust and Banking Co., Ltd.
11-02730	Picard v. Atlantic Security Bank
11-02731	Picard v. Trincaster Corporation
11-02732	Picard v. Bureau of Labor Insurance
11-02733	Picard v. Naidot & Co.
11-02758	Picard v. Caceis Bank Luxembourg
11-02759	Picard v. Nomura International plc
11-02761	Picard v. KBC Investments Limited
11-02762	Picard v. Lighthouse Investment Partners LLC
11-02763	Picard v. Inteligo Bank Ltd.
11-02784	Picard v. Somers Dublin Limited
11-02796	Picard v. BNP Paribas Arbitrage SNC
11-02910	Picard v. Merrill Lynch Bank (Suisse) SA
11-02922	Picard v. Bank Julius Baer & Co. Ltd.

EXHIBIT 1

Adv. Pro. No.	Case
11-02923	Picard v. Falcon Private Bank Ltd.
11-02925	Picard v. Credit Suisse AG
11-02929	Picard v. LGT Bank in Liechtenstein Ltd.
12-01002	Picard v. The Public Institution For Social Security
12-01004	Picard v. Fullerton Capital PTE Ltd.
12-01005	Picard v. SICO Limited
12-01019	Picard v. Banco Itau
12-01021	Picard v. Grosvenor Investment Management
12-01022	Picard v. Credit Agricole
12-01023	Picard v. Arden Asset Management
12-01025	Picard v. Solon Capital, Ltd.
12-01046	Picard v. SNS Bank N.V.
12-01047	Picard v. Koch Industries, Inc.
12-01194	Picard v. Kookmin Bank
12-01195	Picard v. Six Sis AG
12-01202	Picard v. Vontobel AG
12-01205	Picard v. Multi Strategy Fund Ltd
12-01207	Picard v. Lloyds TSB Bank PLC
12-01209	Picard v. BSI AG
12-01210	Picard v. Schroder & Co.
12-01211	Picard v. Union Securities
12-01216	Picard v. Bank Hapoalim
12-01278	Picard v. Zephyros Limited
12-01512	Picard v. ZCM Asset Holding Co
12-01565	Picard v. Standard Chartered Financial Services
12-01566	Picard v. UKFP (Asia) Nominees Ltd.
12-01576	Picard v. BNP Paribas S.A.
12-01577	Picard v. Dresdner Bank
12-01669	Picard v. Barfield Nominees Limited
12-01670	Picard v. Credit Agricole Corporate and Investment Bank
12-01676	Picard v. Clariden Leu
12-01677	Picard v. Societe Generale Private Banking (Suisse) S.A.
12-01680	Picard v. Intesa Sanpaolo SpA
12-01690	Picard v. EFG Bank S.A.
12-01693	Picard v. Lombard Odier Darier Hentsch & Cie
12-01694	Picard v. Banque Cantonale Vaudoise
12-01695	Picard v. Bordier & Cie
12-01697	Picard v. ABN AMRO Fund Services (Isle of Man) Nominees Limited
12-01698	Picard v. Banque Internationale à Luxembourg S.A.
12-01699	Picard v. Royal Bank of Canada
12-01700	Picard v. Caprice International Group Inc.

Bankruptcy Form 424

Certification by All Parties for Direct Appeal Pursuant to 28 U.S.C. § 158(d)(2)(A)(iii)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (SMB) SIPA LIQUIDATION (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. BANQUE CANTONALE VAUDOISE, Defendant.	Adv. Pro. No. 12-01694 (SMB)

CERTIFICATION TO COURT OF APPEALS BY ALL PARTIES[1]

A notice of appeal having been filed in the above-styled matter on March 16, 2017 (ECF No. 72), Irving H. Picard (the "Trustee"), as trustee of the substantively consolidated liquidation proceeding of Bernard L. Madoff Investment Securities LLC ("BLMIS"), under the Securities Investor Protection Act ("SIPA"), 15 U.S.C. §§ 78aaa, *et seq.*, and the estate of Bernard L. Madoff, individually, and Banque Cantonale Vaudoise, who are the appellant and the appellee, hereby certify to the court under 28 U.S.C. § 158(d)(2)(A) that a circumstance specified in 28 U.S.C. § 158(d)(2) exists as stated below.

[1] This certification complies with Official Bankruptcy Form 424.

Leave to appeal in this matter:

☐ is required under 28 U.S.C. § 158(a)
☒ is not required under 28 U.S.C. § 158(a)

This certification arises in an appeal from a final judgment, order, or decree of the United States Bankruptcy Court for the Southern District of New York entered on March 6, 2017 (ECF No. 71).

An immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken. *See* 28 U.S.C. § 158(d)(2)(A)(iii).

SIGNED: April 4, 2017
New York, New York

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Notice of Appeal and Exhibits

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for the Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities LLC
and the estate of Bernard L. Madoff

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (SMB) SIPA LIQUIDATION (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. BANQUE CANTONALE VAUDOISE, Defendant.	Adv. Pro. No. 12-01694 (SMB)

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Irving H. Picard (the "Trustee"), as trustee of the substantively consolidated estate of Bernard L. Madoff Investment Securities LLC under the

Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.*, and Bernard L. Madoff, individually, hereby appeals to the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 158(d)(2), from each and every aspect of the final judgment annexed hereto as Exhibit 1 (the "Final Judgment") of the Honorable Stuart M. Bernstein of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), entered in the above-captioned adversary proceeding (the "Adversary Proceeding"), *Picard v. Banque Cantonale Vaudoise*, Adv. Pro. No. 12-01694 (SMB) (Bankr. S.D.N.Y. Mar. 6, 2017), ECF No. 71, and in the main adversary proceeding, *Securities Investor Protection Corp. v. Bernard L. Madoff Investment Securities LLC* (*In re BLMIS*), Adv. Pro. No. 08-01789 (SMB) (Bankr. S.D.N.Y. Mar. 6, 2017), ECF No. 15184, including without limitation the following:

1. Memorandum Decision Regarding Claims to Recover Foreign Subsequent Transfers of the Bankruptcy Court (Bernstein, J.), dated November 22, 2016 (attached as Exhibit A to the Final Judgment), resulting in the dismissal of all of the Trustee's claims against the defendant in this Adversary Proceeding. *Id.*, ECF No. 14495;

2. Opinion and Order of the United States District Court for the Southern District of New York (Rakoff, J.), dated July 6, 2014 (annexed hereto as Exhibit 2). *Securities Investor Protection Corp. v. Bernard L. Madoff Investment Securities LLC (In re Madoff Sec.)*, No. 12-mc-115 (JSR) (S.D.N.Y. July 7, 2014), ECF No. 551;

3. The Order of the United States District Court for the Southern District of New York (Rakoff, J.) dated May 11, 2013, where applicable (annexed hereto as Exhibit 3). *Id.*, ECF No. 468; and

4. The Order of the United States District Court for the Southern District of New York (Rakoff, J.), dated June 6, 2012, where applicable (annexed hereto as Exhibit 4). *Id.*, ECF No. 167.

The names of the relevant parties to the Final Judgment appealed, and the contact information of their attorneys, are as follows:

Trustee/Appellant	Counsel for Trustee/Appellant
Irving H. Picard, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Estate of Bernard L. Madoff	BAKER & HOSTETLER LLP 45 Rockefeller Plaza New York, New York 10111 Telephone: (212) 589-4200 Facsimile: (212) 589-4201 David J. Sheehan Email: dsheehan@bakerlaw.com

Defendant/Appellee	Counsel for Defendant/Appellee
Banque Cantonale Vaudoise	FLEMMING ZULACK WILLIAMSON ZAUDERER LLP One Liberty Plaza New York, New York 10006 Telephone: (212) 412-9500 Facsimile: (212) 964-9200 John F. Zulack Email: jzulack@fzwz.com

PLEASE TAKE FURTHER NOTICE that the Trustee and the defendant in this Adversary Proceeding have agreed pursuant to 28 U.S.C. § 158(d)(2)(A)(iii) to certify this appeal to the United States Court of Appeals for the Second Circuit. Accordingly, subsequent to the filing of this Notice of Appeal, the parties will also file an Official Bankruptcy Form 424 certifying this appeal.

PLEASE TAKE FURTHER NOTICE that if the United States Court of Appeals for the Second Circuit does not authorize a direct appeal, the Trustee hereby appeals the Final

Judgment, in the alternative, to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 158(a)(1).

Dated: March 16, 2017
New York, New York

By: /s/ *Thomas L. Long*

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EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (SMB) SIPA LIQUIDATION (Substantively Consolidated) **FINAL DOCUMENT CLOSING ADVERSARY PROCEEDING**
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. BANQUE CANTONALE VAUDOISE, Defendant.	Adv. Pro. No. 12-01694 (SMB)

STIPULATED FINAL ORDER
GRANTING MOTION TO DISMISS COMPLAINT

Plaintiff Irving H. Picard (the "Trustee"), as trustee of the substantively consolidated liquidation proceeding of Bernard L. Madoff Investment Securities LLC ("BLMIS"), under the Securities Investor Protection Act ("SIPA"), 15 U.S.C. §§ 78aaa *et seq*., and the estate of Bernard L. Madoff, individually, and defendant Banque Cantonale Vaudoise ("BCV," and together with the Trustee, the "Parties"), by and through their respective undersigned counsel, state as follows:

WHEREAS, on June 6, 2012, the Trustee initiated the above-captioned adversary proceeding in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") by filing a Complaint against BCV. *See Picard v. Banque Cantonale Vaudoise*, Adv. Pro. No. 12-01694 (SMB), ECF No. 1;

WHEREAS, on May 15, 2012 and June 7, 2012, respectively, the United States District Court for the Southern District of New York, the Honorable Jed S. Rakoff, entered Orders in which he withdrew the reference in certain adversary proceedings pursuant to 28 U.S.C. § 157(d) to determine whether SIPA and/or the Bankruptcy Code as incorporated by SIPA apply extraterritorially, permitting the Trustee to avoid initial transfers that were received abroad or to recover from initial, immediate, or mediate foreign transferees (the "Extraterritoriality Issue"). *See Securities Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, No. 12-mc-0115 (JSR), ECF Nos. 97 and 167;

WHEREAS, after consolidated briefing and oral argument on the Extraterritoriality Issue, *see id.,* ECF Nos. 234, 309, 310, 322, and 357, on July 7, 2014, Judge Rakoff entered an Opinion and Order (the "Extraterritoriality Order") and returned the withdrawn adversary proceedings to the Bankruptcy Court for further proceedings consistent with the Extraterritoriality Order. *See Securities Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC,* 513 B.R. 222 (S.D.N.Y. 2014);

WHEREAS, on July 28, 2014, Judge Rakoff entered a Stipulation and Supplemental Opinion and Order in which he supplemented the Extraterritoriality Order to direct that certain additional adversary proceedings should "also be returned to the Bankruptcy Court for further proceedings consistent with" the Extraterritoriality Order. *See Securities Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, No. 12-mc-0115 (JSR), ECF No. 556;

WHEREAS, on December 10, 2014, the Bankruptcy Court entered an Order concerning further proceedings on the Extraterritoriality Issue that directed BCV, the Trustee, and the Securities Investor Protection Corporation to submit supplemental briefing to address (a) which counts asserted in the adversary proceeding against BCV should be dismissed pursuant to the Extraterritoriality Order or the legal standards announced therein and (b) whether the Trustee shall be permitted to file an amended complaint containing allegations relevant to the Extraterritoriality Issue as proffered by the Trustee (together, the "Extraterritoriality Motion to Dismiss"). *See Securities Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, Adv. Pro. No. 08-01789 (SMB), ECF No. 8800;

WHEREAS, on January 5, 2015, BCV filed a consolidated memorandum of law in support of the Extraterritoriality Motion to Dismiss. *See Picard v. Banque Cantonale Vaudoise*, Adv. Pro. No. 12-01694 (SMB), ECF No. 43;

WHEREAS, pursuant to further scheduling Orders, *see Securities Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, Adv. Pro. No. 08-01789 (SMB), ECF Nos. 8990, 9350, and 9720, on June 26, 2015, the Trustee filed (a) a consolidated memorandum of law in opposition to the Extraterritoriality Motion to Dismiss, (b) a supplemental memorandum in opposition to the Extraterritoriality Motion to Dismiss, and (c) proffered allegations as to the Extraterritoriality Issue that the Trustee would include in a proposed second amended complaint. *See Picard v. Banque Cantonale Vaudoise*, Adv. Pro. No. 12-01694 (SMB), ECF Nos. 53-54;

WHEREAS, on September 30, 2015, BCV filed (a) a consolidated reply memorandum of law in support of the Extraterritoriality Motion to Dismiss and (b) a supplemental reply memorandum in support of the Extraterritoriality Motion to Dismiss. *See id*., ECF Nos. 58-59;

WHEREAS, on December 16, 2015, the Bankruptcy Court heard oral argument on the Extraterritoriality Motion to Dismiss. *See Securities Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, Adv. Pro. No. 08-01789 (SMB), ECF No. 12081;

WHEREAS, on November 22, 2016, the Bankruptcy Court issued a Memorandum Decision Regarding Claims to Recover Foreign Subsequent Transfers (the "Memorandum Decision") that granted the Extraterritoriality Motion to Dismiss as to BCV. *See Securities Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, Adv. Pro. No. 08-01789 (SMB), 2016 WL 6900689 (SMB) (Bankr. S.D.N.Y. Nov. 22, 2016), ECF No. 14495;

WHEREAS, the Memorandum Decision directed that the Trustee's claim in this adversary proceeding should be dismissed;

WHEREAS, the Parties have agreed to consent to the Bankruptcy Court's entry of final orders and judgments consistent with the Memorandum Decision in this adversary proceeding;

NOW, for the reasons set forth in the Memorandum Decision, which is incorporated herein and attached hereto as Exhibit A, the Parties agree and stipulate and the Bankruptcy Court hereby orders:

1. The Bankruptcy Court has subject matter jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) and (e)(1) and 15 U.S.C. § 78eee (b)(2)(A) and (b)(4).

2. The Parties expressly and knowingly grant their consent solely for the Bankruptcy Court to enter final orders and judgments with respect to the Extraterritoriality Motion to Dismiss, whether the underlying claims are core under 28 U.S.C. § 157(b)(2) or non-core under 28 U.S.C. § 157(c)(2), subject to appellate review, including under 28 U.S.C. § 158. Notwithstanding the above grant of consent, BCV reserves all other jurisdictional, substantive, or procedural rights and remedies in connection with this adversary proceeding, including with

respect to the Bankruptcy Court's power to finally determine any other matters in this adversary proceeding.

3. The Extraterritoriality Motion to Dismiss is **GRANTED** as to BCV.

Dated: January 20, 2017
New York, New York

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Attorneys for Defendant Banque Cantonale Vaudoise

SO ORDERED

Dated: March 3rd, 2017
New York, New York

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

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION,	:	Adv. P. No. 08-01789 (SMB)
Plaintiff,	:	SIPA LIQUIDATION
– against –	:	(Substantively Consolidated)
BERNARD L. MADOFF INVESTMENT SECURITIES LLC,	:	
Defendant.	:	
In re:	:	
BERNARD L. MADOFF,	:	
Debtor.	:	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, and Bernard L. Madoff,	:	Adv. P. No. 11-02732 (SMB)
Plaintiff,	:	
– against –	:	
BUREAU OF LABOR INSURANCE,	:	
Defendant.	:	

MEMORANDUM DECISION REGARDING CLAIMS TO RECOVER FOREIGN SUBSEQUENT TRANSFERS

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

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STUART M. BERNSTEIN
United States Bankruptcy Judge:

Bankruptcy Code § 550(a)(2) permits a trustee to recover an avoided fraudulent transfer or its value from "any immediate or mediate transferee," *e.g.*, a subsequent

[1] Other Defense Counsel listed on attached Appendix.

transferee of the initial transferee or prior subsequent transferee. Relying on this provision, Irving H. Picard (the "Trustee"), the trustee for the liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act of 1970, 15 U.S.C. §§ 78aaa, *et seq*. ("SIPA"), sued numerous subsequent transferees to recover the value of fraudulent transfers made by BLMIS in connection with the Ponzi scheme conducted by Bernard L. Madoff. In many cases, the initial transferee was a foreign feeder fund and the subsequent transferee was also a foreign entity. The proceedings before the Court primarily concern the application of section 550(a)(2) to subsequent transfers between foreign parties.

I do not write on a clean slate. Judge Rakoff of the United States District Court previously withdrew the reference and laid down some basic ground rules for determining whether the subsequent transfer claims should be dismissed. The parties to the proceedings before Judge Rakoff are referred to as the "Participating Subsequent Transferees." Judge Rakoff held that the Trustee could not pursue recovery of "purely foreign subsequent transfers" due to the application of the presumption against extraterritoriality. *SIPC v. BLMIS* (*In re BLMIS*), 513 B.R. 222, 231 (S.D.N.Y. 2014) ("*ET Decision*"), *supplemented by*, No. 12- mc- 1151 (JSR), 2014 WL 3778155 (S.D.N.Y. July 28, 2014). Alternatively, considerations of international comity supported dismissal. *Id*. at 231-32. The District Court did not dismiss any of the claims, and instead, returned the adversary proceedings to this Court for further proceedings consistent with its decision. *Id*. at 232.

The Participating Subsequent Transferees now seek dismissal of Trustee's claims. In addition, many similarly-situated subsequent transferees that did not participate in

the proceedings before Judge Rakoff (the "Non-Participating Subsequent Transferees") also seek dismissal under the *ET Decision*. In total, motions to dismiss are pending in eighty-eight adversary proceedings. The Trustee, in turn, seeks leave to amend many of his complaints to add allegations of domestic connections relating to the subsequent transfers. Finally, the Bureau of Labor Insurance (the "BLI"), a defendant in a separate adversary proceeding styled *Picard v. Bureau of Labor Insurance*, Adv. P. No. 11-02732, moves for judgment on the pleadings pursuant to Federal Civil Rule 12(c) relying on the *ET Decision*. The Participating Subsequent Transferees, the Non-Participating Subsequent Transferees and BLI are sometimes collectively referred to as the "Subsequent Transferees."

A majority of the Trustee's claims against Subsequent Transferees were made by and/or originated from the Fairfield Funds or the Kingate Funds (both defined below), the initial transferees of BLMIS. These funds are debtors in foreign insolvency proceedings and their liquidators have sought or could have sought to recover substantially the same transfers from the same transferees under the powers granted by the foreign insolvency courts. These subsequent transfer claims are dismissed on grounds of international comity without reaching the issue of extraterritoriality. As to the balance, where the Trustee is seeking to recover subsequent transfers between two foreign entities using foreign bank accounts (without consideration of a U.S. correspondent bank account), those claims are dismissed. Furthermore, because the Court has reviewed the Trustee's proffers regarding these transfers and found them wanting, the Trustee's motions for leave to amend his pleadings to incorporate the facts

alleged in the proffers are denied as futile. The remaining motions to dismiss and for leave to amend are resolved in accordance with the discussion that follows.

BACKGROUND

A. Introduction

The facts underlying the infamous Ponzi scheme perpetrated by Bernard L. Madoff are well-known and have been recounted in many reported decisions. *See, e.g.*, *Picard v. Ida Fishman Revocable Trust* (*In re BLMIS*), 773 F.3d 411, 414-15 (2d Cir. 2014), *cert. denied*, 135 S. Ct. 2859 (2015); *Picard v. JPMorgan Chase & Co.* (*In re BLMIS*), 721 F.3d 54, 58-59 (2d Cir. 2013), *cert. denied*, 134 S. Ct. 2895 (2014); *SIPC v. BLMIS* (*In re BLMIS*), 424 B.R. 122, 125-32 (Bankr. S.D.N.Y. 2010), *aff'd*, 654 F.3d 229 (2d Cir. 2011), *cert. denied*, 133 S. Ct. 25 (2012). Prior to his arrest in December 2008, Madoff perpetrated the largest Ponzi scheme ever discovered through the investment advisory side of BLMIS. He did not engage in any securities transactions on behalf of his customers, and sent them bogus customer statements and trade confirmations showing fictitious trading activity and profits. When customers requested redemptions from their accounts, BLMIS distributed cash from a commingled bank account that included other customers' investments.

While many individuals and entities invested with BLMIS directly, others did so through "feeder funds," which, in turn, invested with BLMIS. The feeder funds were often organized as foreign entities. The largest network of foreign feeder funds was operated by two entities: Fairfield Greenwich Group ("FGG") and Tremont Group Holdings, Inc. ("Tremont"). Even though they operated out of New York, FGG and

Tremont created multiple feeder funds organized in the British Virgin Islands ("BVI") and the Cayman Islands, respectively.

Following the commencement of BLMIS' liquidation, the Trustee sued the feeder funds to avoid and recover as fraudulent transfers distributions they received from BLMIS as initial transferees. He also sued the subsequent transferees, including feeder fund investors, management and service providers. Like the feeder funds, the subsequent transferees were often foreign individuals or entities.

B. The Presumption Against Extraterritoriality

Although the majority of claims are being dismissed on the ground of comity, the parties have focused most of their attention on the issue of extraterritoriality. In addition, the District Court focused on extraterritoriality, and a discussion of that issue first will assist the reader. The "presumption against extraterritoriality" is a "longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991) ("*Aramco*") (internal quotation marks and citations omitted); *accord RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2100 (2016) ("*Nabisco*"); *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 248 (2010) ("*Morrison*"). The presumption "serves to protect against unintended clashes between our laws and those of other nations which could result in international discord." *Aramco*, 499 U.S. at 248.

In *Morrison*, the Supreme Court clarified the presumption in a dispute involving the extraterritorial reach of 10(b) of the Securities and Exchange Act of 1934 ("Exchange

Act"). There, Australian investors sued National Australia Bank Limited ("National") for violations of the Exchange Act in connection with their investment in National stock traded on the Australian Stock Exchange. Although National was an Australian bank, it owned HomeSide Lending, Inc. ("HomeSide"), a mortgage service provider based in Florida. *Morrison*, 561 U.S. at 251. The complaint alleged that HomeSide and its executives manipulated HomeSide's financials to cause it to appear more valuable than it really was, and that National was aware of the deception but failed to act. *Id.* at 252. In other words, the wrongful conduct occurred in the United States. The United States District Court for the Southern District of New York dismissed the complaint for lack of subject matter jurisdiction because the acts that occurred in the United States were only a link in a securities fraud scheme that culminated abroad, and the Second Circuit affirmed on similar grounds. *Id.* at 253.

The Supreme Court affirmed, but on different grounds. It criticized the Second Circuit's use of the "conduct" and "effects" tests (sometimes referred to as a single test, the "conduct and effects test") to determine the applicability of § 10(b) claims.[2] The "effects" test asked "whether the wrongful conduct had a substantial effect in the United States or upon United States citizens," and the "conduct" test asked "whether the wrongful conduct occurred in the United States." *Id.* at 257 (quoting *SEC v. Berger*, 322 F.3d 187, 192-93 (2d Cir. 2003)). Justice Scalia described these standards as "complex in formulation and unpredictable in application." *Id.* at 248.

[2] The Court also explained that the presumption against extraterritoriality implicated dismissal based upon the failure to state a claim, FED. R. CIV. P. 12(b)(6), rather than dismissal for lack of subject matter jurisdiction under FED. R. CIV. P. 12(b)(1). *Morrison*, 561 U.S. at 253-54.

Instead, the presumption against extraterritoriality involves an exercise in statutory interpretation and a two-step analysis which can be examined in either order. "At the first step, we ask whether the presumption against extraterritoriality has been rebutted—that is, whether the statute gives a clear, affirmative indication that it applies extraterritorially." *Nabisco*, 136 S. Ct. at 2101; *accord Morrison*, 561 U.S. at 255 ("When a statute gives no clear indication of an extraterritorial application, it has none."). The first step does not impose a "clear statement rule," because even absent a "clear statement," the context of the statute can be consulted to give the most faithful reading. *Morrison*, 561 U.S. at 265. If the first step yields the conclusion that the statute applies extraterritorially, the inquiry ends.

If it does not, the court must turn to the second step to determine if the litigation involves an extraterritorial application of the statute:

> If the statute is not extraterritorial, then at the second step we determine whether the case involves a domestic application of the statute, and we do this by looking to the statute's "focus." If the conduct relevant to the statute's focus occurred in the United States, then the case involves a permissible domestic application even if other conduct occurred abroad; but if the conduct relevant to the focus occurred in a foreign country, then the case involves an impermissible extraterritorial application regardless of any other conduct that occurred in U.S. territory.

Nabisco, 136 S. Ct. at 2101; *accord Morrison*, 561 U.S. at 266-67 (court must look to the "'focus' of congressional concern," *i.e.*, the "objects of the statute's solicitude"). Courts however, must be wary in concluding too quickly that some minimal domestic conduct means the statute is being applied domestically:

> [I]t is a rare case of prohibited extraterritorial application that lacks *all* contact with the territory of the United States. But the presumption against extraterritorial application would be a craven watchdog indeed if it retreated to its kennel whenever *some* domestic activity is involved in the case.

Morrison, 561 U.S. at 266 (emphasis in original).

The *Morrison* Court first concluded that the plaintiffs had failed to rebut the presumption against the extraterritorial application of section 10(b) of the Exchange Act. *See id.* at 265. Having then held that the focus of Section 10(b) was upon the purchase and sales of securities in the United States, *id.* at 266, the Court concluded that the plaintiffs had failed to state a claim on which relief could be granted and affirmed the dismissal of the complaint on this ground. *Id.* at 273.

C. Extraterritoriality and the Trustee's Recovery Efforts

After *Morrison*, the issue of whether the Bankruptcy Code's avoidance and recovery provisions reached foreign transfers was first addressed in these cases in *Picard v. Bureau of Labor Ins.* (*In re BLMIS*), 480 B.R. 501 (Bankr. S.D.N.Y. 2012) ("*BLI*"). BLI, a Taiwanese entity, invested in Fairfield Sentry, a large BLMIS feeder fund organized in the BVI. BLI submitted a redemption request to Fairfield Sentry and provided wire instructions. Pursuant to those instructions, Fairfield Sentry sent $42,123,406 from a Dublin bank account to a New York JP Morgan Account specified by BLI, and the redemption payment was then sent on to BLI's JP Morgan account in London. *Id.* at 509. Following his appointment, the Trustee sought to recover the subsequent transfers made by Fairfield Sentry to BLI pursuant to section 550 of the Bankruptcy Code. BLI moved to dismiss arguing, *inter alia*, that the Trustee's claims were barred by the presumption against extraterritoriality.[3]

[3] BLI did not argue that comity barred the claim and the Court did not address it. *BLI,* 480 B.R. at 526 n. 24.

Denying the motion, the Bankruptcy Court began with *Morrison*'s second step. Judge Lifland held that the "focus" of "the avoidance and recovery sections [of the Bankruptcy Code] is on the initial transfers that deplete the bankruptcy estate and not on the recipient of the transfers or the subsequent transfers." *Id.* at 524; *accord Begier v. Internal Revenue Serv.*, 496 U.S. 53, 58 (1990) (stating that "the purpose of the [preference] avoidance provision is to preserve the property includable within the bankruptcy estate – the property available for distribution to creditors"); *French v. Liebmann (In re French),* 440 F.3d 145, 154 (4th Cir.) ("[T]he Code's avoidance provisions protect creditors by preserving the bankruptcy estate against illegitimate depletions."), *cert. denied*, 549 U.S. 815 (2006). The depletion of the BLMIS estate occurred domestically because the transfers at issue originated from BLMIS' JPMorgan account in New York and went to Fairfield Sentry's New York account at HSBC. *BLI*, 480 B.R. at 525. "As the focus of Section 550 occurred domestically, the fact that BLI received BLMIS's fraudulently transferred property in a foreign country does not make the Trustee's application of this section extraterritorial." *Id.*[4]

While this conclusion was dispositive, Judge Lifland also addressed the first step in the inquiry and concluded that Congress expressed a clear intention that § 550 should apply extraterritorially. *Id.* at 526. A statute does not require a "clear statement" that it applies abroad, and the court may consider the statutory context "in searching for a

[4] The Court added that pragmatic considerations supported its conclusion. "In particular if the avoidance and recovery provisions ceased to be effective at the borders of the United States, a debtor could end run the Code by 'simply arrang[ing] to have the transfer made overseas,' thereby shielding them from United States law and recovery by creditors." *BLI*, 480 B.R. at 525 (quoting *Maxwell Commc'n Corp. plc v. Societe General plc* (*In re Maxwell Commc'n Corp. plc*), 186 B.R. 807, 816 (S.D.N.Y.1995) ("*Maxwell I*"), *aff'd on other grounds,* 93 F.3d 1036 (2d Cir.1996) ("*Maxwell II*")).

clear indication of statutory meaning." *Id.* at 526 (quoting *United States v. Weingarten,* 632 F.3d 60, 65 (2d Cir.2011)). "Congress demonstrated its clear intent for the extraterritorial application of Section 550 through interweaving terminology and cross-references to relevant Code provisions." *Id.* at 527. Specifically, the term "property of the estate" includes property "wherever located, and by whomever held" that was property of the debtor at the commencement of the case." 11 U.S.C. § 541(a)(1). Thus, "property of the estate" extends to property located worldwide. *Id.*; *accord* 28 U.S.C. § 1334(e)(1) (granting the District Court exclusive jurisdiction "of all the property, wherever located, of the debtor as of the commencement of [the bankruptcy] case, and of property of the estate").

The avoidance provisions of the Bankruptcy Code grant a trustee the power to avoid certain prepetition transfers "of an interest of the debtor in property," *e.g.*, 11 U.S.C. § 548(a)(1), the same term used in Bankruptcy Code § 541 to define the scope of "property of the estate." *BLI*, 480 B.R. at 527. For this reason, the concepts of "property of the estate" and "property of the debtor" are the same, separated only by time. As the Supreme Court explained in *Begier*, § 541 "delineates the scope of 'property of the estate' and serves as the postpetition analog to § 547(b)'s 'property of the debtor.'" *Id.* (quoting *Begier,* 496 U.S. at 58–59) (internal quotation marks omitted). Accordingly, "(i) 'property of the debtor' subject to the preferential transfer provision is best understood as that property that would have been part of the estate had it not been transferred before the commencement of the bankruptcy proceedings" and (ii) "the purpose of the avoidance provision is to preserve the property includable within the bankruptcy estate." *Id.* (quoting *Begier*, 496 U.S. at 58); *accord French*, 440 F.3d at 151

("Section 541 defines 'property of the estate' as, *inter alia,* all 'interests of the debtor in property.' 11 U.S.C. § 541(a)(1). In turn, § 548 allows the avoidance of certain transfers of such 'interest[s] of the debtor in property.' 11 U.S.C. § 548(a)(1). By incorporating the language of § 541 to define what property a trustee may recover under his avoidance powers, § 548 plainly allows a trustee to avoid any transfer of property that *would have been* 'property of the estate' prior to the transfer in question—as defined by § 541—even if that property is not 'property of the estate' *now*.") (emphasis in original); *contra Maxwell I*, 186 B.R. at 820-21 (concluding that Congress did not clearly express its desire that Bankruptcy Code § 547 applies to foreign transfers of the debtor's property); *Barclay v. Swiss Fin. Corp. Ltd.* (*In re Midland Euro Exch. Inc.*), 347 B.R. 708, 718 (Bankr. C.D. Cal. 2006) (concluding that Congress did not intend for § 548 to apply extraterritorially).

Section 550, in turn, allows the trustee to recover the avoided transfer from the initial transferee, the person for whose benefit the transfer was made or the subsequent transferee:

> [B]y incorporating the avoidance provisions by reference, Section 550 expresses the same congressional intent regarding extraterritorial application. Thus, Congress expressed intent for the application of Section 550 to fraudulently transferred assets located outside the United States and the presumption against extraterritoriality does not apply.

BLI, 480 B.R. at 528.

D. The *ET Decision*

1. Extraterritoriality

Less than two years after the issuance of the *BLI* decision, District Judge Rakoff reached the opposite conclusion in the *ET Decision*.[5] As mentioned above, the *ET Decision* was issued in connection with consolidated motions to dismiss filed by the Participating Subsequent Transferees. Since the District Court was looking at multiple cases, it described the complaint in *Picard v. CACEIS Bank Luxembourg*, Adv. P. No. 11-02758 ("*CACEIS Complaint*") as an example. There, the two CACEIS defendants (collectively, "CACEIS") were organized and operating in Luxembourg or France. *ET Decision*, 513 B.R. at 225. They invested in two foreign feeder funds, Fairfield Sentry Limited ("Fairfield Sentry"), a BVI company in liquidation in the BVI, and Harley International (Cayman) Limited ("Harley"), a Cayman Islands company in liquidation in the Cayman Islands. (*CACEIS Complaint* at ¶¶ 2, 24-25.) Fairfield Sentry and Harley invested substantially all of their assets with BLMIS, received initial transfers from BLMIS and subsequently transferred some or all of those funds directly or indirectly to CACEIS. (*Id.* at ¶¶ 2, 37, 44, 46, 49, 58.) The Trustee sued the feeder funds to avoid and recover the initial transfers they had received from BLMIS. He settled with one of the feeder funds, obtained a default judgment against the other, and pursued CACEIS to recover subsequent transfers in the amount of $50 million received from the feeder funds. *ET Decision*, 513 B.R. at 225-26.

[5] The motions to dismiss before Judge Rakoff were briefed before Judge Lifland issued the *BLI* decision, and the *ET Decision* did not mention it.

Judge Rakoff first considered whether the Trustee was attempting to apply § 550 extraterritorially. He initially cautioned that "a mere connection to a U.S. debtor, be it tangential or remote, is insufficient on its own to make every application of the Bankruptcy Code domestic." *Id.* at 227. He then looked to the "regulatory focus" of the Bankruptcy Code's avoidance and recovery provisions, and concluded that both § 548 and § 550(a) focused on the property transferred and the fact of the transfer, not the debtor. *Id.*; *but see French*, 440 F.3d at 150 ("§ 548 focuses not on the property itself, but on the fraud of transferring it."). "Accordingly, under *Morrison,* the transaction being regulated by section 550(a)(2) is the transfer of property to a subsequent transferee, not the relationship of that property to a perhaps-distant debtor." *ET Decision*, 513 B.R. at 227.

To determine whether the subsequent transfers occurred extraterritorially, "the court considers the location of the transfers as well as the component events of those transactions." *Id.* (quoting *Maxwell I,* 186 B.R. at 817). Returning to the *CACEIS Complaint*, Judge Rakoff observed that "the relevant transfers and transferees are predominately foreign: foreign feeder funds transferring assets abroad to their foreign customers and other foreign transferees." *Id.* Under similar factual circumstances, the *Maxwell* and *Midland* courts had found transfers between foreign entities "to implicate extraterritorial applications of the Bankruptcy Code's avoidance provisions." *Id.* at 227-28. Finally, the fact that the chain of transfers originated with BLMIS in New York or that the subsequent transferees allegedly used correspondent banks in the United States to process the dollar-denominated transfers was insufficient "to make the recovery of these otherwise thoroughly foreign subsequent transfers into a domestic application of

section 550(a)." *Id.* at 228 & n. 1. Accordingly, the Trustee was seeking to recover foreign transfers that required the extraterritorial application of § 550(a). *Id.* at 228.

The District Court then turned to the question of whether Congress intended the extraterritorial application of section 550(a). Here too, the *ET Decision* disagreed with *BLI*. First, "[n]othing in [the language of section 550(a)] suggests that Congress intended for this section to apply to foreign transfers. . . ." *Id.* at 228. Judge Rakoff next looked to context and surrounding Bankruptcy Code provisions. *Id.* The Trustee had argued that § 541's definition of "property of the estate," which included property held worldwide, indicated Congress' intent to allow the Trustee to recover "property of the debtor" that, but for the fraudulent transfer, would have been "property of the estate" as of the commencement of the bankruptcy case. *Id.* at 228-29. Judge Rakoff rejected the Trustee's argument for the same reason the District Court rejected a similar argument in *Maxwell I;* fraudulently transferred "property of the debtor" only becomes "property of the estate" *after* recovery, *ET Decision*, 513 B.R. at 229 (citing *Fed. Deposit Ins. Corp. v. Hirsch* (*In re Colonial Realty Co.*), 980 F.2d 125, 131 (2d Cir.1992)), "so section 541 cannot supply any extraterritorial authority that the avoidance and recovery provisions lack on their own." *Id.*; *accord Maxwell I,* 186 B.R. at 820; *Midland,* 347 B.R. at 718.[6] Furthermore, the use of the phrase "wherever located" in § 541 indicating Congress' intent to apply that section extraterritorially, undercut the conclusion that § 548 or SIPA

[6] The District Court also rejected Trustee's argument that provisions of SIPA and policy concerns support extraterritorial application of section 550(a). *ET Decision*, 513 B.R. at 230-31.

§ 78fff-2(c)(3),[7] which did not include similar language, also applied extraterritorially. *ET Decision*, 513 B.R. at 230.

Based on those observations, the District Court "conclude[d] that the presumption against extraterritorial application of federal statutes ha[d] not been rebutted [and] the Trustee therefore may not use section 550(a) to pursue recovery of purely foreign subsequent transfers." *Id.* at 231.

2. Comity

In the alternative, the District Court ruled that "the Trustee's use of section 550(a) to reach these foreign transfers would be precluded by concerns of international comity." *Id.* at 231. Comity "is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws." *Id.* (quoting *Maxwell II*, 93 F.3d at 1046 (in turn quoting *Hilton v. Guyot,* 159 U.S. 113, 163–64 (1895))). A comity inquiry requires a "choice-of-law analysis to determine whether the application of U.S.

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7 SIPA § 78fff-2(c)(3) authorizes the SIPA trustee to recover pre-filing transfers of customer property even though customer property was not property of the SIPA debtor at the time of the transfer under applicable non-bankruptcy law. It provides:

> Whenever customer property is not sufficient to pay in full the claims set forth in subparagraphs (A) through (D) of paragraph (1), the trustee may recover any property transferred by the debtor which, except for such transfer, would have been customer property if and to the extent that such transfer is voidable or void under the provisions of Title 11. Such recovered property shall be treated as customer property. For purposes of such recovery, the property so transferred shall be deemed to have been the property of the debtor and, if such transfer was made to a customer or for his benefit, such customer shall be deemed to have been a creditor, the laws of any State to the contrary notwithstanding.

law would be reasonable under the circumstances, comparing the interests of the United States and the relevant foreign state." *ET Decision*, 513 B.R. at 231 (citing *Maxwell II*, 91 F.3d at 1047-48).

Judge Rakoff observed that many feeder funds, such as Fairfield Sentry Limited and Harley International (Cayman) Limited, the two initial transferees in *CACEIS*, were also in liquidation proceedings abroad, and had their own rules governing the recovery of transfers. *Id.* at 232. The BVI courts in Fairfield Sentry had already rejected the liquidators' common law claims to reclaim the transfers made to its own investors, and the "Trustee [wa]s seeking to use SIPA to reach around such foreign liquidations in order to make claims to assets on behalf of the SIPA customer-property estate — a specialized estate created solely by a U.S. statute, with which the defendants here have no direct relationship." *Id.* These investors had no reason to expect that U.S. law would govern their relationships with their feeder funds, and "[g]iven the indirect relationship between [BLMIS] and the transfers at issue here, these foreign jurisdictions have a greater interest in applying their own laws than does the United States." *Id.* Accordingly, as the Second Circuit found in *Maxwell II,* "the interests of the affected forums and the mutual interest of all nations in smoothly functioning international law counsel against the application of United States law in the present case." *Id.* (quoting *Maxwell II,* 93 F.3d at 1053).

Although the District Court ultimately ruled that the "Trustee's recovery claims are dismissed to the extent that they seek to recover purely foreign transfers," *id.*, the District Court did not actually dismiss any of the complaints. Instead, the District Court concluded:

> Here, to the extent that the Trustee's complaints allege that both the transferor and the transferee reside outside of the United States, there is no plausible inference that the transfer occurred domestically. Therefore, unless the Trustee can put forth specific facts suggesting a domestic transfer, his recovery actions seeking foreign transfers should be dismissed.

ET Decision, 513 B.R. at 232 n. 4.

The District Court returned the cases to this Court "for further proceedings consistent with this Opinion and Order." *Id.* at 232. Accordingly, I view my task as entailing the review of the subsequent transfer allegations to determine whether they survive dismissal under the extraterritoriality or comity principles enunciated in the *ET Decision*.

E. Post-*ET Decision* Proceedings

After the adversary proceedings were returned to this Court, the parties stipulated to the *Scheduling Order*.[8] Exhibit A to the *Scheduling Order* listed those defendants that were parties to the proceedings before Judge Rakoff and to the *ET Decision*, *i.e.*, the Participating Subsequent Transferees. Exhibit B listed defendants who were not parties to the *ET Decision* but contended that they were similarly situated, *i.e.,* the Non-Participating Subsequent Transferees. The *Scheduling Order* set forth a briefing schedule to address whether the Trustee's existing claims against the Subsequent Transferees should be dismissed and whether the Trustee should be permitted to amend the complaints. The Trustee and the Participating and Non-Participating Subsequent Transferees were also permitted to file pleadings relevant to each individual adversary proceeding, including short supplemental briefs and, in the

[8] *Order Concerning Further Proceedings on Extraterritoriality Motion and Trustee's Omnibus Motion for Leave to Replead and for Limited Discovery* which the Court so ordered on December 10, 2014 (as amended, the "*Scheduling Order*") (ECF Doc. # 8800).

case of the Trustee, either a proposed amended complaint or proffered allegations supporting an amended complaint. (*See Scheduling Order* at ¶¶ 3-5, 8.) To facilitate the Court's and the Defendant's review and analysis, the Trustee was required to include a chart (the "Chart") summarizing the Trustee's position as to why the motions should be denied. (*Id.* at ¶ 6.) [9]

Importantly, the *Scheduling Order* included certain stipulations relating to the place of formation or citizenship of the subsequent transferors and Subsequent Transferees. (*Scheduling Order* at ¶ M ("Exhibits A and B list as the party's 'Location' the jurisdiction under whose laws the transferors and transferees that are not natural persons are organized, and the citizenship of the transferors and transferees that are natural persons, in each case as of the time of the transfers, as alleged in the complaints or as agreed by the Trustee and the respective transferees.").)[10] According to Exhibits A and B, none of the subsequent transferors were "located" in the United States, but some of the Subsequent Transferees were.

The Subsequent Transferees filed their supplemental motion to dismiss on December 31, 2014. (*See Consolidated Supplemental Memorandum of Law In Support of the Transferee Defendants' Motion to Dismiss Based on Extraterritoriality* on

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9 The first adversary proceeding listed on the Chart was dismissed after briefing. (*Stipulation and Order for Voluntary Dismissal of Adversary Proceeding with Prejudice*, dated Feb. 12, 2016 (Adv. Pro. No. 09-01154 ECF # 132).) The motion to dismiss the subsequent transfer claim asserted in that proceeding against Vizcaya Partners Limited and the Trustee's motion to amend the complaint are denied as moot.

10 No party was precluded from arguing that the stipulated "Location" was or was not preclusive in determining whether the transferor or transferee was "foreign" for purpose of the motions or otherwise. (*Scheduling Order* at ¶ M.)

December 31, 2014 ("*Subsequent Transferees Brief*") (ECF Doc. # 8903).) The parties seeking dismissal were listed in Appendix A. (*See Subsequent Transferees Brief* at 1.) The Trustee filed his response on June 26, 2015. (*Trustee's Memorandum of Law In Opposition to the Transferee Defendants' Motion to Dismiss Based on Extraterritoriality and in Further Support of Trustee's Motion for Leave to Amend Complaints* ("*Trustee Brief*") (ECF Doc. # 10287).) The response was limited to the defendants listed in Exhibit 1 to the *Trustee Brief*.

Meanwhile, BLI, whose dismissal motion had been denied by the Bankruptcy Court in *BLI*, asked to be included as a Non-Participating Subsequent Transferee in the returned proceedings. The Trustee opposed the request, and the Court denied it explaining that unlike the Subsequent Transferees, BLI had "litigated the extraterritoriality [issue] and . . . lost it." (Transcript of 11/19/2014 Hr'g at 31:10-15 (ECF Doc # 9542).) BLI subsequently moved for judgment on the pleadings pursuant to Federal Civil Rule 12(c) based on the holdings of the *ET Decision*.[11] After extended colloquy with the Trustee's counsel who argued, among other things, that the complaint in *BLI* should not be dismissed under the *ET Decision*, counsel expressed the willingness that I decide the BLI motion on the merits as part of the omnibus motion raising the same issues. (Transcript of 7/29/2015 Hr'g at 20:7-18 (ECF Doc # 11158).)

[11] *See Memorandum of Law In Support of Defendant Bureau of Labor Insurance's Motion for Judgment on the Pleadings*, dated Apr. 9, 2015 (ECF Adv. P. No. 11-02732 Doc. # 86).

D. Parties' Legal Arguments

The Subsequent Transferees and the Trustee disagree about the scope of the *ET Decision*. Initially, the Trustee argues that the *ET Decision* was limited to resolving the "purely legal" issue of whether SIPA and the Bankruptcy Code apply extraterritorially to allow the Trustee to recover purely foreign transfers. (*Trustee Brief* at 14-16.) The Subsequent Transferees responds that the *ET Decision* was not limited to an abstract legal issue and was issued upon consideration of both factual and legal arguments. Thus, the *ET Decision* was binding on the Participating Subsequent Transferees and persuasive as to the Non-Participating Subsequent Transferees. (*Reply Consolidated Supplemental Memorandum of Law In Support of Transferee Defendants' Motion to Dismiss Based on Extraterritoriality*, dated Sept. 30, 2015, at 6-7 ("*Subsequent Transferees Reply*") (ECF Doc. # 11542).)

Next, the Subsequent Transferees assert that their motions to dismiss the *existing* claims should be granted because the Trustee failed to respond to those arguments and relied solely on new allegations in his proposed amended complaints. Accordingly, the Court should grant the branch seeking dismissal. (*Subsequent Transferees Reply* at 4.) The Trustee, however, sought leave to amend many of the complaints to avoid dismissal under the *ET Decision* by adding allegations that implied domestic "components" to the subsequent transfers. He broke these allegations down into nineteen categories (the "Chart Factors"), summarized them in the Chart annexed to the *Trustee Brief* as Ex. 2, and the Chart showed which factors applied to specific Subsequent Transferees. The Trustee argues that all of these factors were relevant to determining whether the subsequent transfers were extraterritorial because the *ET*

Decision instructed the Court to consider the location of the transfers as well as the "component events of those transactions." (*Trustee Brief* at 18.) The Subsequent Transferees respond that none of the Trustee's nineteen factors say anything about the location of the transfers which comprised the crux of the *ET Decision*. (*Subsequent Transferee Reply* at 8, 18-33.) They also add that the holistic approach endorsed by the Trustee was rejected by the Supreme Court in *Morrison*. (*Id*. at 17-18.)

Lastly, the Trustee argues that the branch of the *ET Decision* that addressed comity applied only to the extent the subsequent transfers were foreign transfers, and Judge Rakoff's decision was limited to comity's "potential application" to the cases. (*Trustee Brief* at 33-34.) The Trustee also attacks the comity ruling on the merits arguing that the cases fail the applicable two-prong test requiring a parallel proceeding and a true conflict of law and facts sufficient to justify abstention. (*Id*. at 34-37.) The Subsequent Transferees respond that the comity ruling provides an alternative basis for dismissal to the presumption against extraterritoriality. Moreover, the Trustee's merits attack on Judge Rakoff's comity holding confuse two separate doctrines — "comity of courts" and "comity of nations." (*Subsequent Transferee Reply* at 36-40.)

DISCUSSION

A. Effect of the *ET Decision*

The parties offer dramatically different interpretations of the scope and effect of the *ET Decision*. The Subsequent Transferees view the *ET Decision* as a "mandate" that requires the dismissal of the Trustee's claims to the extent subsequent transfers were made between two parties residing outside of the United States. (*Subsequent Transferees Reply* at 1.) The Trustee, on the other hand, argues that the *ET Decision*

decided a "purely legal" issue and "recognized that the inquiry is whether the *conduct* alleged in the complaints is extraterritorial." (*Trustee Brief* at 2 (emphasis in original).)

The truth lies somewhere between. The *ET Decision* did not simply decide that § 550(a)(2) did not apply extraterritorially, one prong of the two prong test. Judge Rakoff also considered the second prong, concluding that the "focus" of the statute was the subsequent transfer. Using the *CACEIS Complaint* as an example, he held that a complaint required extraterritorial application of § 550(a)(2) if "the relevant transfers and transferees are predominantly foreign: foreign feeder funds transferring assets abroad to their foreign customers and other foreign transferees." *ET Decision*, 513 B.R. at 227.

He did not, however, dismiss any complaints, including the *CACEIS Complaint*. Instead, he returned the cases involving the Participating Subsequent Transferees to this Court "for further proceedings consistent with this Opinion and Order." *Id.* at 232. Consequently, the Court must examine the allegations in the complaints or the proposed amendments involving the Participating Subsequent Transferees to determine if the alleged transfers require the extraterritorial application of § 550(a)(2), or, as the *Nabisco* Court explained, whether "the conduct relevant to the statute's focus occurred in the United States," *Nabisco*, 136 S. Ct. at 2101, bearing in mind that "it is a rare case of prohibited extraterritorial application that lacks *all* contact with the territory of the United States." *Morrison*, 561 U.S. at 266 (emphasis in original). Moreover, the Court must decide whether any particular subsequent transfer claim should be dismissed on the ground of international comity.

The District Court's re-referral did not involve the Non-Participating Subsequent Transferees, and the Court is not similarly bound. The Non-Participating Subsequent Transferees nevertheless argue that the *ET Decision* should govern the outcome of their motions to dismiss under the law of the case doctrine. The *ET Decision* was decided in the context of the BLMIS SIPA liquidation, and "different adversary proceedings in a bankruptcy case do not constitute different 'cases.'" (*Subsequent Transferees Brief* at 7-8 (quoting *Bourdeau Bros. v. Montagne* (*In re Montagne*), No. 08-1024 (CAB), 2010 WL 271347, at *6 (Bankr. D. Vt. Jan. 22, 2010)).)

The Court considers the *ET Decision* highly persuasive in the Non-Participating Subsequent Transfer cases, and notes that the parties have approached the disposition of the motions by applying the dictates of the *ET Decision* to the Participating and Non-Participating Subsequent Transferees in the same manner. Furthermore, even if I would reach a conclusion different from Judge Rakoff, applying different rules would lead to conflicting decisions on the same facts. Finally, although the Trustee successfully opposed BLI's efforts to be included with the other Non-Participating Subsequent Transferees, he effectively conceded its inclusion when his counsel stated that the Court should decide BLI's motion for judgment on the pleadings in accordance with the *ET Decision*. Accordingly, all of the motions to dismiss the complaints, and BLI's motion for judgment on the pleadings, will be governed by the *ET Decision*.

B. International Comity

Although the District Court relied on international comity as an alternative basis to dismiss the subsequent transfer claims, I begin there because it presents a more straightforward analysis. The District Court held that "even if the presumption against

extraterritoriality were rebutted, the Trustee's use of section 550(a) to reach these foreign transfers would be precluded by concerns of international comity." *ET Decision*, 513 B.R. at 231. Dismissing an action based on comity is a form of abstention, *JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V.*, 412 F.3d 418, 422 (2d Cir. 2005), by which "states normally refrain from prescribing laws that govern activities connected with another state 'when the exercise of such jurisdiction is unreasonable.'" *Maxwell II*, 93 F.3d at 1047-48 (quoting RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 403(1)).

> Whether so legislating would be "unreasonable" is determined "by evaluating all relevant factors, including, where appropriate," such factors as the link between the regulating state and the relevant activity, the connection between that state and the person responsible for the activity (or protected by the regulation), the nature of the regulated activity and its importance to the regulating state, the effect of the regulation on justified expectations, the significance of the regulation to the international system, the extent of other states' interests, and the likelihood of conflict with other states' regulations.

Id. at 1048 (citing RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 403(2)). When considering a motion to abstain, a "court is not restricted to the face of the pleadings, but may review affidavits and other evidence to resolve factual disputes concerning its jurisdiction to hear the action." *Kingsway Fin. Servs., Inc. v. Pricewaterhousecoopers, LLP*, 420 F. Supp. 2d 228, 233 n.5 (S.D.N.Y. 2005) (quoting *DeLoreto v. Ment*, 944 F. Supp. 1023, 1028 (D. Conn. 1996)).

International comity is especially important in the context of the Bankruptcy Code. *Maxwell II*, 93 F.3d at 1048. First, deference to foreign insolvency proceedings promotes the goals of fair, equitable and orderly distribution of the debtor's assets. *Id.*; *accord Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.,* 825 F.2d 709, 713 (2d Cir.1987)

("American courts have long recognized the particular need to extend comity to foreign bankruptcy proceedings."); *Cunard S.S. Co. Ltd. v. Salen Reefer Servs. AB*, 773 F.2d 452, 458 (2d Cir.1985) ("American courts have consistently recognized the interest of foreign courts in liquidating or winding up the affairs of their own domestic business entities."). Second, Congress has explicitly recognized the central concept of comity under chapter 15 of the Bankruptcy Code when providing additional assistance to foreign representatives under 11 U.S.C. § 1507(b).[12] *Cf. Maxwell II*, 93 F.3d at 1048 ("Congress explicitly recognized the importance of the principles of international comity in transnational insolvency situations when it revised the bankruptcy laws. *See* 11 U.S.C. § 304.").

In reaching the conclusion that claims based on foreign transfers should be dismissed out of concern for international comity, the District Court emphasized that many of the foreign BLMIS feeder funds were in liquidation proceedings in their home

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[12] Section 1507(b) provides:

> (b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure-
>
> (1) just treatment of all holders of claims against or interests in the debtor's property;
>
> (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;
>
> (3) prevention of preferential or fraudulent dispositions of property of the debtor;
>
> (4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and
>
> (5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

Comity was one of six factors under former Bankruptcy Code § 304, but under § 1507(b), "comity [has been] raised to the introductory language to make it clear that it is the central concept to be addressed." H.R. REP. No. 109-31, at 1507 (2005).

countries subject to their own rules relating to the disgorgement of transfers, the BVI court had already decided in the case of the "Fairfield Funds" – Fairfield Sentry Limited ("Fairfield Sentry"), Fairfield Sigma Limited ("Fairfield Sigma") and Fairfield Lambda Limited ("Fairfield Lambda") – that the liquidators could not reclaim transfers to the feeder fund investors under certain common law theories. The Trustee was attempting to reach around the foreign liquidations to make claims on behalf of a SIPA estate with whom the feeder fund investors – here, the Subsequent Transferees – had no reason to expect that U.S. law would apply to their relationships with the debtor feeder funds. *ET Decision*, 513 B.R. at 232.

The Trustee argues that the District Court did not decide this issue "beyond its potential application to purely foreign subsequent transfers," and its decision is not implicated at all if this Court finds that the transfers were "sufficiently domestic to apply United States law." (*Trustee Brief* at 33 ("[I]f this Court determines after analyzing the component events and transactions that the transfers are not foreign but sufficiently domestic to apply United States law, then the District Court's alternative rationale of comity is not implicated.").) However, the *ET Decision* plainly stated the opposite, holding that comity considerations required dismissal "even if the presumption against extraterritoriality were rebutted." *ET Decision*, 513 B.R. at 231; *accord Maxwell II*, 93 F.3d at 1047 (international comity is separate from the presumption against extraterritoriality, and may be applied to preclude the application of a U.S. statute to conduct clearly subject to that statute).

The Trustee next implies that Judge Rakoff got it wrong. He argues that for comity to apply, the defendants must demonstrate that "(i) parallel proceedings in the

United States and overseas constitute a true conflict between American law and that of a foreign jurisdiction and (ii) the specific facts . . . are sufficiently *exceptional* to justify abstention' to outweigh the district court's general obligation to exercise its jurisdiction." (*Trustee Brief* at 34 (citations and quotation marks omitted) (emphasis in original).) According to the Trustee, BLMIS is not the subject of a parallel liquidation proceeding overseas and no exceptional circumstances support the application of comity. (*Id.* at 34-37.)

Judge Rakoff plainly ruled that comity applies at least where the feeder fund that was the initial transferee was the subject of a foreign liquidation proceeding with its own rules of disgorgement. Moreover, the Trustee misapprehends the branch of the comity doctrine invoked by Judge Rakoff. The Second Circuit has recognized that "international comity" describes two distinct doctrines: first, "as a canon of construction, it might shorten the reach of a statute; second, it may be viewed as a discretionary act of deference by a national court to decline to exercise jurisdiction in a case properly adjudicated in a foreign state, the so-called comity among courts." *Maxwell II*, 93 F.3d at 1047; *accord Bigio v. Coca-Cola Co.*, 448 F.3d 176, 178 (2d Cir. 2006) (Rakoff, J., sitting by designation), *cert. denied*, 549 U.S. 1282 (2007).

The Trustee's dual factors (parallel proceedings and exceptional facts) apply to the latter branch of comity – comity among courts. *See, e.g.*, *Royal & Sun Alliance Ins. Co. of Canada v. Century Int'l Arms, Inc.*, 466 F.3d 88, 92-97 (2d Cir. 2006). Comity among courts is inapplicable here because there are no parallel foreign avoidance actions in which the Trustee seeks to recover from the Subsequent Transferees. Instead, Judge Rakoff was referring to comity among nations, a canon of construction that limits

the reach of the Bankruptcy Code's avoidance and recovery provisions. *ET Decision*, 513 B.R. at 231 ("Courts conducting a comity analysis must engage in a choice-of-law analysis to determine whether the application of U.S. law would be reasonable under the circumstances . . . .").

Comity among nations does not require parallel proceedings, and Judge Rakoff was not referring to the existence or nonexistence of parallel proceedings involving BLMIS. Instead, the reference to foreign proceedings in which the liquidators asserted claims for similar relief against the feeder fund investors informed his conclusion that those foreign jurisdictions had a greater interest in the application of their own laws than the United States had in the application of U.S. law. *See ET Decision*, 513 B.R. at 232 ("Given the indirect relationship between [BLMIS] and the transfers at issue here, these foreign jurisdictions have a greater interest in applying their own laws than does the United States.").

The District Court illustrated this conclusion with references to the Fairfield Sentry liquidation in the BVI. Fairfield Sentry had invested 95% of its funds with BLMIS, and went into liquidation in the BVI shortly after the disclosure of Madoff's Ponzi scheme. Prior to the disclosure of Madoff's fraud and the Fairfield Sentry liquidation, Fairfield Sentry shareholders who redeemed their shares were paid redemption prices based upon the Net Asset Value ("NAV") of their shares, which, in turn, was based on the assumed total value of Fairfield Sentry's assets. In computing NAVs, Fairfield Sentry assigned substantial value to its investment in BLMIS, but the subsequent revelation of Madoff's Ponzi scheme, and the worthlessness of the BLMIS

investments, meant that the earlier computations of NAV and the redemption prices were wrong and grossly inflated.

Fairfield Sentry, acting at the behest of the BVI liquidators, sued the redeeming shareholders in the BVI (the "BVI Redeemer Actions") to recover the redemption payments. It argued that the shareholders had redeemed their investments at an inflated price based upon an erroneous computation of the NAV that governed the redemption price of their shares. The defendants in the BVI Redeemer Actions are the immediate Subsequent Transferees of Fairfield Sentry, the initial transferee of BLMIS in many of the cases before this Court.

In *Fairfield Sentry Ltd. v. Migani*, [2014] UKPC 9, the Privy Council affirmed the lower courts and dismissed Fairfield Sentry's claims against the redeemers. The Privy Council concluded that the redemption price was determined at the time of the redemption based on the facts then known and not upon information that subsequently became available. *See id.* at ¶¶ 2, 24, 30-31. The court further concluded that although the subscription agreements signed by the redeemers contained a New York choice of law provision, New York law was irrelevant. Fairfield Sentry's right to recover the redemptions depended on the articles of association and was governed by BVI law. *Id.* at ¶ 20.

The Fairfield Sentry liquidators also brought redeemer actions in New York (the "US Redeemer Actions," and with the BVI Redeemer Actions, the "Redeemer Actions"). The background to the US Redeemer Actions is discussed in *In re Fairfield Sentry Ltd.*, 458 B.R. 665 (S.D.N.Y. 2011). In April 2010, the liquidators began filing lawsuits in

New York state court against banks that had purchased shares in Fairfield Sentry and against their customers to whom they had resold the shares – the unknown beneficial owners. *Id.* at 671-72. The liquidators initially asserted only state law claims for money had and received, unjust enrichment, mistaken payment and constructive trust, advancing the same theory of recovery as the BVI Redeemer Actions. *Id.* at 672.

In June 2010, the liquidators filed a chapter 15 proceeding which was recognized by this Court. The liquidators subsequently commenced substantially similar US Redeemer Actions in this Court, and removed the state court actions to this Court. *Id.* As of today, there are 305 US Redeemer Actions pending before the Court, (*see Notice of Status Conference*, dated July 8, 2016 (ECF Adv. Proc. No. 10-03496 Doc. # 898)), involving 747 defendants. (*Transcript of July 28, 2016 Hr'g.* at 8 (ECF Adv. Proc. No. 10-03496 Doc. # 906).)[13] In addition to their original state law claims, the liquidators have amended or propose to amend many of the complaints in the US Redeemer Actions to assert statutory claims under the BVI Insolvency Act (the "BVI Act").

The Amended Complaint in *Fairfield Sentry Ltd. (in Liquidation) v. UBS Fund Servs. (Ireland) Ltd.* (*In re Fairfield Sentry Ltd.*), Adv. Proc. No. 11-01258 (Bankr. S.D.N.Y.) is typical. It asserts claims to recover unfair preferences under section 245 of the BVI Act[14] paid to UBS Ireland and the beneficial shareholders. It also asserts claims

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[13] The defendants in forty-one removed actions moved to remand those actions to state court. The proceedings ordered by the District Court in connection with those motions has been held in abeyance while litigation proceeded in the BVI.

[14] Section 245 of the BVI Insolvency Act provides in pertinent part:

> (1) Subject to subsection (2), a transaction entered into by a company is an unfair preference given by the company to a creditor if the transaction (a) is an insolvency transaction; (b) is entered into within the vulnerability period; and (c) has the effect of putting the creditor into a position which, in the event of the company going into

against the same defendants to recover "undervalue" transactions, which correspond to U.S. constructive fraudulent transfer claims, under section 246 of the BVI Act.[15] If the liquidators prevail on their BVI statutory claims, the court may avoid the transaction in whole or in part, restore the parties to the position they would have been in if they had not entered into the transaction, BVI Act § 249(1)(a), (b), and under certain circumstances, follow the property into the hands of third parties. *See* BVI Act §§ 249, 250. In short, the Fairfield Sentry liquidators have brought substantially the same claims against substantially the same group of defendants to recover substantially the same transfers brought by the Trustee against the Fairfield Sentry Subsequent Transferees.

Although the District Court did not specifically mention the "Kingate Funds" – Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd. – its liquidators have also brought actions that mirror the Trustee's claims in this Court. The Kingate Funds were BLMIS feeder funds that suffered the same fate as the Fairfield Funds, and wound up in

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insolvent liquidation, will be better than the position he would have been in if the transaction had not been entered into.

(2) A transaction is not an unfair preference if the transaction took place in the ordinary course of business. . . .

[15] Section 246 of the BVI Insolvency Act provides in pertinent part:

(1) Subject to subsection (2), a company enters into an undervalue transaction with a person if (a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration; or (b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company; and (c) in either case, the transaction concerned (i) is an insolvency transaction; and (ii) is entered into within the vulnerability period.

(2) A company does not enter into an undervalue transaction with a person if (a) the company enters into the transaction in good faith and for the purposes of its business; and (b) at the time when it enters into the transaction, there were reasonable grounds for believing that the transaction would benefit the company. . . .

liquidation in Bermuda and the BVI. Acting through their liquidators, the Kingate Funds brought suit in Bermuda against several service providers (Kingate Management Limited ("KML")[16] and FIM Limited and FIM Advisors (collectively, "FIM")) and their direct and indirect shareholders and affiliates, as the ultimate recipients, to recover overpaid fees based on erroneous NAVs under both legal and equitable theories. (*See Amended Statement of Claim*, dated Feb. 12, 2012, annexed as Exhibit A to the *Reply Declaration of Anthony M. Gruppuso, Esq.*, dated May 31, 2016 (ECF Adv. Proc. No. 09-01161 Doc. # 273).) The Kingate Funds also asserted tort and breach of contract claims against the service providers and their ultimate owners, Messrs. Carlo Grosso and Federico Ceretti.

In a decision dated September 25, 2015, the Supreme Court of Bermuda rendered its Judgment on Preliminary Issues. *See Kingate Global Fund Ltd.* (*In Liquidation*) *v. Kingate Management Ltd.*, [2015] SC (Bda) 65 Com (Bermuda). Adhering to the Privy Council's decision in *Fairfield Sentry*, the Bermuda court concluded that monthly NAV determinations were binding on the Kingate Funds and their members in the absence of bad faith or manifest error for the purpose of calculating subscription and redemption prices, *id.* at ¶ 81, and were similarly binding with respect the fees paid to KML. *Id.* at ¶ 116. Furthermore, BLMIS' bad faith or manifest error which led to the erroneous calculation of the NAVs did not affect KML's right to fees, *id.* at ¶ 142, but if KML induced the Funds' mistake, KML's contractual entitlement to fees was no defense to the unjust enrichment claim to the extent the payment exceeded the true NAV. *Id.* at ¶ 163.

[16] KML is in liquidation in Bermuda.

The Trustee has sued the same defendants as well as the Kingate Funds and two additional service providers, Citi Hedge Fund Services Limited and HSBC Bank Bermuda Limited. (*See Picard v. Ceretti* (*In re BLMIS*), Adv. Proc. No. 09-01161.) He seeks to avoid the initial transfers to the Kingate Funds, and recover the initial transfers and subsequent transfers from the immediate and mediate transferees of the Kingate Funds. In connection with his efforts, the Trustee sought, *inter alia*, to compel the Bermuda liquidators to produce the discovery that the Bermuda defendants had produced to them. Referring to the Bermuda action during his motion to compel discovery, the Trustee argued that "[i]n this proceeding, the Trustee seeks to recover the same moneys from the same parties." (*Reply Memorandum of Law in Support of the Trustee's Motion to Compel Defendants to Produce Documents and Participate in Discovery,* dated May 31, 2016, at 7 (ECF Adv. Proc. # 09-01161 Doc. # 272).)

The Trustee's subsequent transfer claims arising from initial transfers to the Fairfield Funds and the Kingate Funds (together, sometimes referred to as the "Funds") duplicate the actions brought by the respective liquidators, with limited success, against substantially the same defendants to recover substantially the same transfers. In this respect, the Trustee's claims against the Subsequent Transferees of those funds attempt to reach around the proceedings in those foreign insolvency courts, and subject the common defendants to duplicative claims by different plaintiffs.

As between the United States on the one hand and the BVI and Bermuda on the other, the latter jurisdictions have a greater interest in regulating the activity that gave rise to the common claims asserted by the Trustee and the liquidators. The Funds were formed under foreign law, and their liquidation, including the marshaling of assets and

the payment of claims, is governed by local insolvency law, to which particular deference is due under our own jurisprudence. The United States has no interest in regulating the relationship between the Funds and their investors or the liquidation of the Funds and the payment of their investors' claims. The United States' interest is purely remedial; the Bankruptcy Code allows the Trustee to follow the initial fraudulent transfer into the hands of a subsequent transferee, although the presumption against extraterritoriality, discussed in the next section, may dictate otherwise. In fact, the Trustee has successfully argued that the investors in feeder funds have no recourse under SIPA against the BLMIS customer property estate because they were not customers of BLMIS. *See Kruse v. Bricklayers & Allied Craftsman Local 2 Annuity Fund* (*In re BLMIS*), 708 F.3d 422, 426-28 (2d Cir. 2013); *SIPC v. Jacqueline Green Rollover Account*, 12 Civ. 1039 (DLC), 2012 WL 3042986, at *13 (S.D.N.Y. July 25, 2012), *SIPC v. BLMIS* (*In re BLMIS*), 515 B.R. 161, 169 (Bankr. S.D.N.Y. 2014).

Finally, although the subscription agreements, at least in the case of Fairfield Sentry, were governed by New York law, the Privy Council in *Fairfield Sentry* ruled that the redemptions were governed by the Articles of Association and BVI law. *Migani*, UKPC 9, at ¶ 10. Thus, if the shareholders had any expectations relating to which law governed redemptions, they should have expected BVI law to govern. Furthermore, forum selection and choice of law clauses in agreements do "not preclude a court from deferring on grounds of international comity to a foreign tribunal where deference is otherwise warranted." *Altos Hornos de Mexico*, 412 F.3d at 429. And since the Trustee has not argued that New York law governed any aspect of the relationships between the Kingate Funds and their service providers or their shareholders, there is no basis to

conclude that these transferees should have expected United States or New York law to govern the payments made to them or the recovery of the payments in the event of the Kingate Funds' liquidation.

Accordingly, the recovery of Subsequent Transfers under 11 U.S.C. § 550(a)(2) arising from the avoidance of initial transfers made by BLMIS to the Fairfield Funds or the Kingate Funds is barred under the doctrine of comity as interpreted in the *ET Decision*, and if the initial transfers cannot be avoided, there can be no recovery from subsequent transferees. 11 U.S.C. § 550(a) ("to the extent a transfer is avoided . . . the trustee may recover . . . "). This category includes all of the claims identified in the Chart pertaining to the following adversary proceedings: 09-01161, 09-01239, 10-05346, 10-05348, 10-05351, 10-05355, 11-02149, 11-02493, 11-02537, 11-02538, 11-02539, 11-02540, 11-02541, 11-02542, 11-02553, 11-02554, 11-2568, 11-02569, 11-02570, 11-02571, 11-02572, 11-02573, 11-02730, 11-02731, 11-02762, 11-02763, 11-02910, 11-02922, 11-02923, 11-02925, 11-02929, 12-01002, 12-01004, 12-01005, 12-01019, 12-01021, 12-01022, 12-01023, 12-001025, 12-01046, 12-01047, 12-01194, 12-01195, 12-01202, 12-01205, 12-01207, 12-01209, 12-01210, 12-01211, 12-01216, 12-01512, 12-01513, 12-01565, 12-01566, 12-01577, 12-01669, 12-01676, 12-01677, 12-01680, 12-01690, 12-01693, 12-01694 and 12-01695. In addition, the claims against BLI are based on subsequent transfers from Fairfield Sentry, the initial transferee. *See BLI*, 480 B.R. at 506-07. Furthermore, all of the subsequent transfers alleged in Adv. Proc. Nos. 12-01697 and 12-01700 and identified in the Chart originated with Fairfield Sentry or Fairfield Sigma. These claims are dismissed on comity grounds and leave to amend is denied.

In several multi-defendant, multi-transferor adversary proceedings, the following defendants received subsequent transfers only from the Fairfield Funds or the Kingate Funds:

Table 1

Adv. Proc. No.	Subsequent Transferee
09-01364	HSBC Private Bank (Suisse) S.A.
10-05120	BGL BNP Paribas S.A.
10-05353	Natixis; Tensyr Ltd.
11-02758	Caseis Bank
11-02784	Somers Nominees (Far East) Ltd.
12-01576	BGL BNP Paribas Luxembourg S.A.; BNP Paribas (Suisse); BNP Paribas S.A.
12-01698	Banque Internationale a Luxembourg (Suisse) S.A. (f/k/a Dexia Private Bank (Switzerland) Ltd.); Banque Internationale a Luxembourg S.A. (f/k/a Dexia Banque Internationale a Luxembourg S.A.), individually and as successor in interest to Dexia Nordic Private Bank S.A.; RBC Dexia Investor Services Bank S.A.; RBC Dexia Investors Services España, S.A.
12-01699	Royal Bank of Canada; Royal Bank of Canada Trust Company (Jersey) Ltd.; Royal Bank of Canada (Asia) Ltd.; Royal Bank of Canada (Suisse) S.A.; RBC Dominion Securities Inc.

These subsequent transfer claims are dismissed, and leave to amend is denied.

Finally, the Chart indicates that the following Subsequent Transferees received subsequent transfers from the Kingate Funds and/or the Fairfield Funds as well as another transferor:

Table 2

Adv. Proc. No.	Subsequent Transferee
10-05120	BNP Paribas Securities Services S.A.
11-02758	Caceis Bank Luxembourg
11-02784	Somers Dublin Ltd.
12-01273	Mistral (SPC)
12-01278	Zephyros Ltd.
12-01576	BNP Paribas Arbitrage SNC; BNP Paribas Bank & Trust Cayman Ltd.; BNP Paribas Securities Services, S.A.; BNP Paribas Securities Services Succursale de Luxembourg
12-01699	Guernroy Ltd.; Royal Bank of Canada (Channel Islands) Ltd.
12-01702	Dove Hill Trust

These claims are dismissed (and the Trustee's motions for leave to amend are denied), to the extent the Fairfield Funds or the Kingate Funds received the initial transfers, again for the same reasons.

Judge Rakoff also observed that Harley International ("Harley") was in liquidation in the Cayman Islands, *ET Decision*, 513 B.R. at 225 (citing *CACEIS Complaint*). According to the Chart, Harley made transfers to the following defendant Subsequent Transferees:

Table 3

Adv. Proc. No.	Subsequent Transferee
09-01364	HSBC Bank PLC
10-05353	Bloom Asset Holdings Fund
11-02758	CACEIS Bank Luxembourg
11-02759	Nomura International PLC
11-02760	ABN AMRO Bank N.V.

11-02761	KBC Investments Ltd.
11-02784	Somers Dublin Ltd.
11-02796	BNP Paribas Arbitrage SNC

By order dated Feb. 5, 2010, the Cayman Islands Grand Court, Financial Services Division ("Grand Court"), recognized the Trustee as the sole representative of the BLMIS estate in the Cayman Islands. *In re BLMIS*, 2010 (1) CILR 231, at ¶ 6 (Grand Ct. Cayman Is.). He subsequently issued a summons seeking disclosure, information and documents from the official liquidators relevant to potential causes of action that Harley might have had against any Fortis entity, and in particular, its former administrator, Fortis Prime Fund Solutions (IOM) Ltd. ("Fortis"), now known as ABN AMRO Fund Services (IOM) Ltd. *In re Harley Int'l (Cayman) Ltd.*, 2012(1) CILR 178, at ¶ 5 (Grand Ct. Cayman Is.). The Grand Court dismissed the Trustee's application, because it was "the function of Harley's official liquidators, not the trustee, to investigate whether or not Harley has any cause of action against its former professional service providers." *Id.* After the official liquidators rendered their report and served a copy on the Trustee, the Trustee filed an application to seal it, but the Grand Court denied the sealing application. *Id.* at ¶ 20.

It is not clear whether the Trustee pursued any further relief in the Harley liquidation, but he actively litigated avoidance claims in connection with the Cayman Islands liquidation of two funds operated by the Primeo Fund. One of the Primeo Funds was a feeder fund with its own BLMIS account, but following a restructuring in April 2007, both Primeo Funds operated strictly as sub feeder funds of two BLMIS feeder funds, Alpha Prime Fund Ltd. and Herald Fund SPC. *Picard v. Primeo Fund (In*

Liquidation), 2014(1) CILR 379 ("*Primeo*"), at ¶ 3 (Ct. App. Cayman Is.). The Trustee commenced proceedings against the Primeo Fund as an initial and subsequent transferee to recover preferential and fraudulent transfers under U.S. bankruptcy law and to recover preferences under § 145 of the Cayman Islands Companies Law (or equivalent common law rules). *Id.* at ¶ 5. The Cayman Islands Court of Appeal ultimately ruled that the Trustee was entitled to pursue claims against the Primeo Funds under the avoidance provisions of Cayman Islands law, but not under U.S. law. *Id.* at ¶¶ 55, 57, 59.

As in the case of the Fairfield Funds and the Kingate Funds, the Cayman Islands has a greater interest in regulating the activities that gave rise to the Trustee's subsequent transfer claims, particularly the validity or invalidity of payments by Harley to its investors and service providers. The United States, on the other hand, has no interest in regulating the transfers from a foreign fund to its investors or service providers. The only U.S. connection to those transfers is the Trustee's right under the Bankruptcy Code to follow BLMIS' fraudulent transfers into the hands of third parties who did not deal with BLMIS directly. Moreover, the Trustee has asserted claims against other transferees in Cayman Islands liquidation proceedings, and the Cayman Islands Court of Appeal has acknowledged his right to sue in the Cayman Islands and invoke Cayman Islands avoidance law. Finally, those who invested in Harley and lost their investments have no rights against BLMIS, and must seek to recoup their investments through the Cayman Islands liquidation proceedings.

The Subsequent Transferees have also identified three subsequent transferors that are in liquidation in Luxembourg: Luxalpha SICAV, Oreades SICAV and

Luxembourg Investment Fund U.S. Equity Plus. Although the principles discussed above might suggest that any Subsequent Transfer claims emanating from transfers by these debtors should also be barred, the Court is not prepared to reach this conclusion on the current state of the record. The Court has not been directed to any information regarding those liquidations, whether Luxembourg law allows the liquidator to avoid and recover preferences or fraudulent transfers (regardless of what they are called) and whether the Trustee is attempting to make an end-run around those proceedings. Accordingly, the Court declines to dismiss those claims or deny leave to amend on the basis of comity, without prejudice to any party's right to supplement the record through an appropriate motion.

C. Extraterritoriality

1. Introduction

The Court next considers the balance of the claims under the doctrine of extraterritoriality and whether the allegations supplied in the complaints and/or proffers rebut the presumption against extraterritoriality by alleging, in each case, a domestic transfer. The rules that govern motions to dismiss under Federal Civil Rule 12(b)(6) apply to this branch of the motions to dismiss. To state a legally sufficient claim, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted); *accord Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678; *accord Twombly*, 550 U.S. at 556. Courts do not

decide plausibility in a vacuum. Determining whether a claim is plausible is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 556. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557).

The *ET Decision* was concerned with foreign transfers. It did not, however, define or provide a test to determine when a transfer was "foreign" except that "purely foreign transfers" – transfers between two foreign entities that do not reside in the United States using non-U.S. bank accounts (or correspondent U.S. bank accounts) – are obviously "foreign." The Subsequent Transferees argue that a party is "foreign" if it was formed under foreign law, as all of the non-individual Subsequent Transferees were, or is the citizen of another nation as are the two individual Subsequent Transferees discussed below. (*Subsequent Transferees Brief* at 12.) However, the *ET Decision* never mentioned "citizenship" or "domicile," although it did highlight the place of organization as the *sine qua non* of foreignness. *See ET Decision*, 513 B.R. at 227-28 (discussing the facts in *Midland Euro Exchange*). In addition, the District Court stated that "to the extent that the Trustee's complaints allege that both the transferor and the transferee reside outside of the United States, there is no plausible inference that the transfer occurred domestically." *ET Decision*, 513 B.R. at 232 n. 4. While meant as an admonition directed to the Trustee, the statement suggests that a transfer between two

entities organized under foreign law might nonetheless be domestic if the parties "resided" in the United States.

The District Court did not explain what it meant by "reside," but it meant something more than mere presence. "[E]ven where the claims touch and concern the territory of the United States, they must do so with sufficient force to displace the presumption against extraterritorial application. See *Morrison,* 561 U.S. 247, 130 S. Ct. at 2883–2888. Corporations are often present in many countries, and it would reach too far to say that mere corporate presence suffices." *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1669 (2013).

In addition, it does not appear that that the District Court equated residence for purposes of extraterritoriality with the test for personal jurisdiction as the Trustee seems to do. First, the tests for personal jurisdiction and extraterritoriality are not the same. *Absolute Activist Value Master Fund Ltd. v. Ficeto*, 677 F.3d 60, 69 (2d Cir. 2012) ("Ewing's lack of contact with the United States may provide a basis for dismissing the case against him for lack of personal jurisdiction . . . but the transactional test announced in *Morrison* does not require that each defendant alleged to be involved in a fraudulent scheme engage in conduct in the United States.").

Second, the *CACEIS Complaint* included numerous allegations relating to personal jurisdiction:

> 6. The CACEIS Defendants are subject to personal jurisdiction in this judicial district because they purposely availed themselves of the laws and protections of the United States and the state of New York by, among other things, knowingly directing funds to be invested with New York-based BLMIS through the Feeder Funds. The CACEIS

> Defendants knowingly received subsequent transfers from BLMIS by withdrawing money from the Feeder Funds.
>
> 7. By directing investments through Fairfield Sentry, a Fairfield Greenwich Group ("FGG") managed Madoff feeder fund, the CACEIS Defendants knowingly accepted the rights, benefits, and privileges of conducting business and/or transactions in the United States and New York. Upon information and belief, the CACEIS Defendants entered, or caused their agent to enter, into subscription agreements with Fairfield Sentry under which they submitted to New York jurisdiction, sent copies of the agreements to FGG's New York City office, and wired funds to Fairfield Sentry through a bank in New York. In addition, the CACEIS Defendants are part of the CACEIS Group, which maintains an office in New York City. The CACEIS Defendants thus derived significant revenue from New York and maintained minimum contacts and/or general business contacts with the United States and New York in connection with the claims alleged herein.

(*CACEIS Complaint* at ¶¶ 6-7.) Despite these allegations, the District Court held that the "subsequent transfers that the Trustee seeks to recover are foreign transfers." *ET Decision*, 513 B.R. at 228.[17] The District Court also discounted the allegation that "the

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[17] The Trustee points out that the *ET Decision* did not mention the personal jurisdiction allegations, (*Trustee's Brief* at 21-22), and adds that the District Court erroneously concluded that the *CACEIS Complaint* did not allege a New York choice of law provision. (*Id.*at 22 n. 93.) The text in the *CACEIS Complaint* spanned just nineteen pages. Judge Rakoff undoubtedly read it, and his failure to mention the allegations relating to personal jurisdiction implies that he deemed them to be irrelevant to the issue of extraterritoriality.

In addition, the Trustee is wrong when he says that the *CACEIS Complaint* alleged that the CACEIS subscription agreements contained New York choice of law clauses and that Judge Rakoff wrongly concluded that they did not. Rather, the *CACEIS Complaint* alleged that subscription agreements that the CACEIS defendants signed included a submission to New York jurisdiction. (*CACEIS Complaint* ¶ 7 ("Upon information and belief, the CACEIS Defendants entered, or caused their agent to enter, into subscription agreements with Fairfield Sentry under which they submitted to New York jurisdiction. . . .").) In fact, the Fairfield Sentry liquidators have sued the CACEIS defendants in this Court to recover the same subsequent transfers/redemptions under both New York and BVI law, asserting personal jurisdiction, *inter alia*, under subscription agreements that include a provision containing a submission to jurisdiction in New York without mentioning that New York law governs. *See Fairfield Sentry Ltd. (In Liquidation) v. CACEIS Bank Luxembourg,* Adv. Pro. No. 10-03624 (SMB) (Bankr. S.D.N.Y.) (ECF Adv. Pro. No. 10-03624 Doc. # 31, at ¶ 21); *Fairfield Sentry Ltd. (In Liquidation) v. CACEIS Bank EX IXIS IS,* Adv. Pro. No. 10-03871 (SMB) (Bankr. S.D.N.Y.) (ECF Adv. Pro. No. 10-03871 Doc. # 22, at ¶ 21). Finally, the reference to the absence of a New York choice of law provision and

CACEIS Defendants are part of the CACEIS Group, which maintains an office in New York City."

Rather, it appears that the District Court was concerned with where the parties conducted their operations. Its conclusion that the CACEIS defendants were foreign was based on the fact that they were organized and "operating" in foreign countries. *ET Decision*, 513 B.R. at 225. On the other hand, several of the feeder funds involved in these cases were organized in one country but maintained no operations or office other than a post office box in their home country, did not employ anyone in the home country, and were organized as exempt companies that could not solicit investors in their own countries. Instead, they were run from another location, often New York, by the employees of affiliated entities, and identified the affiliate's address as their own when conducting business. In addition, one subsequent transferor, Fairfield Greenwich Limited (Cayman), was registered to do business in New York. Where the Trustee alleges non-conclusory facts to the effect that the subsequent transferor and Subsequent Transferee conducted their principal and only operations in the United States and maintained their bank accounts in the United States, it is plausible to infer that the subsequent transfer occurred domestically.

This brings me to the critical factor – where the transfer occurred. Judge Rakoff's reference to where the parties resided was secondary. While the U.S. citizenship or residency of the parties may support the inference that the transaction is domestic, the

creditor expectations appeared in the portion of the *ET Decision* addressing comity, not extraterritoriality. *ET Decision*, 513 B.R. at 232.

focus is the location of the transfer and not the location of the parties to the transfer; and a transfer from one foreign account to another foreign account is still a foreign transfer. *See Absolute,* 677 F.3d at69 ("While it may be more likely for domestic transactions to involve parties residing in the United States, '[a] purchaser's citizenship or residency does not affect where a transaction occurs; a foreign resident can make a purchase within the United States, and a United States resident can make a purchase outside the United States.'") (quoting *Plumbers' Union Local No. 12 Pension Fund v. Swiss Reins. Co.,* 753 F. Supp. 2d 166, 178 (S.D.N.Y.2010)). Furthermore, a mere allegation that the transaction "took place in the United States" is insufficient to allege a domestic transaction, "[a]bsent factual allegations suggesting that the Funds became irrevocably bound within the United States or that title was transferred within the United States, including, but not limited to, facts concerning the formation of the contracts, the placement of purchase orders, the passing of title, *or the exchange of money*." *Id.* at 70 (emphasis added).

In addition, it is necessary to distinguish between the transfer and the steps necessary to carry it out. In *Loginovskaya v. Batrachenko*, 764 F.3d 266 (2d Cir. 2014), decided after the *ET Decision*, the Court dealt with the extraterritorial application of § 22 of the Commodity Exchange Act ("CEA"). There, the plaintiff was a Russian citizen and resident; the defendant was a U.S. citizen residing in Moscow, and the CEO of the Thor Group, an international financial services group based in New York that managed investment programs chiefly in commodities futures and real estate. Investors would invest in Thor United which, in turn, was supposed to invest in one of the Thor programs. The defendant induced the plaintiff to invest in the Thor program, she

transferred $720,000 to Thor United's bank accounts in New York, but eventually lost her investment. *Id.* at 268-69.

The plaintiff sued the defendant alleging that he had engaged in fraudulent conduct in violation of CEA § 40.[18] Applying its holding in *Absolute*, the Court explained that in order for the plaintiff to rebut the presumption against extraterritoriality and demonstrate that her investment was a domestic transaction, she would have to show that "the transfer of title or the point of irrevocable liability for such an interest occurred in the United States." *Id.* at 274. The plaintiff purchased an interest in Thor United, and the investment contracts with Thor United were negotiated and signed in Russia. *Id.* Although Thor United was incorporated in New York, "a party's residency or citizenship is irrelevant to the location of a given transaction." *Id.* (quoting *Absolute,* 677 F.3d at 70) (internal quotation marks omitted). Furthermore, although the plaintiff transferred her funds to Thor United's bank account in New York,

> [t]hese transfers . . . were actions needed to carry out the transactions, and not the transactions themselves — which were previously entered into when the contracts were executed in Russia. The direction to wire transfer money to the United States is insufficient to demonstrate a domestic transaction.

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[18] Section 40 states in pertinent part as follows:

> (1) It shall be unlawful for a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—
>
> (A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or
>
> (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

7 U.S.C. § 6*o*(1) (2008).

Id. at 275.

The *ET Decision* imposed additional limitations on the Trustee's ability to allege a domestic transfer. First, a transfer to a correspondent bank located in the United States is not a domestic transfer for purposes of extraterritoriality. *ET Decision*, 513 B.R. at 228 n. 1. "Correspondent accounts are accounts in domestic banks held in the name of foreign financial institutions. Typically, foreign banks are unable to maintain branch offices in the United States and therefore maintain an account at a United States bank to effect dollar transactions." *Licci v. Lebanese Canadian Bank, SAL,* 673 F.3d 50, 56 n. 3 (2d Cir.2012) (citations and internal quotation marks omitted), *certifying questions to* 984 N.E.2d 893 (N.Y. 2012). In this way, the use of a correspondent bank facilitates the transfer of dollar-denominated payments to a foreign country. The District Court's pronouncement reflects the view that although the purposeful use of a correspondent bank account may support personal jurisdiction, *Official Comm. of Unsecured Creditors v. Bahrain Islamic Bank*, 549 B.R. 56, 68 (S.D.N.Y. 2016), the routing of transfer to a U.S. bank account to facilitate the transfer to a foreign bank account is not a domestic transaction for extraterritoriality purposes. *See Cendeño v. Intech Grp., Inc.*, 733 F. Supp. 2d 471, 472 (S.D.N.Y. 2010) (concluding that RICO did not apply extraterritorially where the scheme's contacts with the United States were limited to the movement of funds into and out of U.S. based bank accounts), *aff'd*, 457 F. App'x. 35 (2d Cir. 2012); *Maxwell I*, 186 B.R. at 817 n. 5 (debtor's payment of overdraft debt owed to U.K. bank, routed through the creditor's U.S. account and

immediately credited to the U.K. overdraft, was not a domestic transfer).[19]

Second, the *ET Decision* implies that an otherwise extraterritorial subsequent transfer beyond the reach of § 550(a)(2) cannot be drawn back as the result of a later, subsequent transfer of the funds to the United States. The Trustee had argued before the District Court that the policy of § 550(a) would be undermined if a U.S. debtor could intentionally transfer its money offshore and retransfer it to the United States to avoid the reach of the Bankruptcy Code. *ET Decision*, 513 B.R. at 231. Judge Rakoff rejected the policy argument, stating that in such a circumstance, "the Trustee here may be able to utilize the laws of the countries where such transfers occurred to avoid such an evasion while at the same time avoiding international discord." *Id.* The statement suggests that once funds have been transferred beyond the territorial reach of the recovery provisions under Bankruptcy Code § 550(a)(2), the re-transfer of those funds back to the United States cannot be recovered as a subsequent transfer under the Bankruptcy Code.

Third, the District Court did not adopt *Maxwell I*'s "component events" test, at least as the Trustee reads it. Trustee advocates for an expanded test to determine that a transfer is domestic, including the following "component events" he derives from *Maxwell I*:

> (i) the debtor's location; (ii) the defendants' location; (iii) where the defendants engaged in business regarding the transaction; (iv) what

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[19] The Court is bound to apply the District Court's ruling on the use of a correspondent bank account. Nevertheless, if title to the cash passed to the Subsequent Transferee when it reached a U.S. correspondent bank account, and the Subsequent Transferee was then free to use the money as it saw fit, the transfer occurred domestically under the Second Circuit case law discussed earlier. Moreover, the transferee may have made subsequent transfers from the U.S. correspondent bank account to other domestic transferees, and consequently, the funds may never have left the United States.

> transaction and agreements the parties entered into that led to the debt that the transfers were used to pay; (v) where the parties' relationship was centered when conducting the transaction underlying the debt that triggered the transfers; (vi) the law governing the parties' transactions; and (vii) how the transaction was concluded.

(*Trustee Brief* at 18.)[20] Initially, the continuing relevance of certain "component events" that the Trustee culls from *Maxwell I* is open to question. *Maxwell I* was decided when the "conduct" and "effect" tests were controlling law in this Circuit, and several of the "component events" identified by the Trustee refer to where conduct "relating to" the transfer occurred rather than where the transfer itself occurred. These include "where the defendants engaged in business regarding the transaction" and "where the parties' relationship was centered when conducting the transaction underlying the debt that triggered the transfers." (*Trustee's Brief* at 18.) *Morrison* subsequently abrogated the "conduct" and "effects" tests because they led to unpredictable results, Morrison, 561 U.S. at 256, 261; *accord Loginovskaya*, 764 F.3d at 274 n. 9 (stating that *Morrison* dispensed with the "conduct and effects" test), and the Trustee's conduct-related "component events" call for the type of analysis that *Morrison* rejected.

Similarly, the *Maxwell I* Court distinguished certain conduct as "preparatory" to the transfers. *Maxwell I*, 186 B.R. at 817 ("Even assuming that the transfers were

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[20] I do not adopt the Trustee's characterization of the "component events" identified by the *Maxwell I* Court. Ruling that the transfers were extraterritorial, the *Maxwell I* Court observed that the debtor's and the transferee banks' relationship was centered in England, the transfers satisfied antecedent debts that arose in England, and the debtor repaid the debts by transferring the funds to the U.K. *Maxwell I*, 186 B.R. at 817. The U.S. sale that was the source of the funds was also a component event, but was "more appropriately characterized as a preparatory step to the transfers," and was "insufficient—in light of the absence of any other domestic connection—to characterize the transfers as occurring within the borders of the U.S." *Id.* Notably, the District Court focused on the location of the recipients. The debtor-transferor was an English holding company but its United States affiliates accounted for most of the debtor's asset pool. *See id.* at 812.

initiated in the U.S. after the U.S. assets were sold, this conduct is more appropriately characterized as a preparatory step to the transfers.") (citing *Gushi Bros. Co. v. Bank of Guam,* 28 F.3d 1535, 1538 (9th Cir.1994) ("[C]onduct occurring within the United States which, standing alone, is merely preparatory or incidental to the proscribed conduct does not confer ... jurisdiction.")). The *Morrison* Court expressly criticized the distinction between "merely preparatory" conduct in the United States and conduct in the United States that rendered the transaction domestic. *Morrison*, 561 F.2d at 258.

In truth, the conduct to which the Trustee points was, at most, those "actions needed to carry out the transactions, and not the transactions themselves." *Loginovskaya*, 764 F.3d at 275.

2. The Nineteen Chart Factors

In furtherance of his argument that the subsequent transfers in these cases were predominately domestic, the Trustee's submission included the Chart that was required by the *Scheduling Order*. (*Trustee's Brief*, Ex. 2-A, 2-B.) The Chart listed and explained nineteen factors he argued were germane to the determination whether to dismiss a complaint on extraterritoriality grounds, and showed which factors applied to each case. Many of the factors are patently irrelevant under the criteria discussed in the *ET Decision* and the Second Circuit cases discussed above. Some relate to the selection of United States governing law or venue in the agreements between the subsequent transferor and transferee (Factors 2, 3). These contract provisions have nothing to do with where the parties exchanged the cash. And alleging that a feeder fund paid a fee to a defendant Subsequent Transferee using BLMIS customer property, (Factor 14), is just another way of saying the feeder fund transferred customer property, an essential

element of a subsequent transfer claim. It says nothing about the domestic nature of the transfer.

Other factors center on the Subsequent Transferee's knowledge that it was entrusting or investing assets with a foreign feeder fund that entrusted or invested the feeder fund's assets with BLMIS for the supposed purpose of investing in U.S. equity and Treasury securities in the United States. (Factors 4-7.) Judge Rakoff considered the U.S. origin of the initial transfer, and rejected it. *ET Decision*, 513 B.R. at 228 ("Although the chain of transfers originated with Madoff Securities in New York, that fact is insufficient to make the recovery of these otherwise thoroughly foreign subsequent transfers into a domestic application of section 550(a)."). In addition, the *CACEIS Complaint* alleged that the defendants had knowingly invested with the New York-based BLMIS through the feeder funds, but that allegation did not affect Judge Rakoff's conclusion that the subsequent transfers were foreign. A Subsequent Transferee's knowledge that it was investing in a foreign feeder fund that it knows will invest or entrust money with BLMIS does not, without more, render the subsequent redemption of that investment domestic.

Two other factors refer to fees received based on BLMIS' performance or fees for investing with a feeder fund or soliciting others to invest in the fund. (Factors 14, 15.) None of these factors or their underlying allegations pertain to the factors on which Judge Rakoff focused: the "foreignness" of the parties and the location of the sending and receiving bank accounts.

The Trustee also places significance on the fact that some Subsequent Transferees filed customer claims in the BLMIS liquidation. (Factor 17.) The Subsequent Transfers have no relevance to the customer claim. The customer's net equity claim is determined under the Net Investment Method approved by the Second Circuit in *In re BLMIS*, 654 F.3d 229 (2d Cir. 2011), *cert. denied,* 133 S. Ct. 24 (2012), and computes the difference between the amount the customer deposited and the amount he withdrew. The relevant withdrawals are the initial transfers the customer received from BLMIS, not the subsequent transfers a third-party received from a BLMIS customer such as a feeder fund. If the Subsequent Transferee was also a BLMIS investor, the third party subsequent transfers are unrelated to his net equity claim. If, on the other hand, the Subsequent Transferee was not a BLMIS investor and is asserting a BLMIS claim to recover his investment in the feeder fund, the Trustee has successfully argued that feeder fund investors were not BLMIS customers under SIPA, and as discussed above in the comity section of this opinion, do not have allowable net equity claims for that reason.

Finally, many of the factors relied on by the Trustee touch on the actions by the Subsequent Transferee in its own right or through a U.S. affiliate or U.S. service provider relating to its investment in the feeder fund and BLMIS. These include allegations that the Subsequent Transferee conducted due diligence in the United States, or used U.S. affiliates or U.S. agents for this and other purposes, in connection with the transfers or transactions at issue. (Factors 8-11.) Other factors relate more generally to a relationship between the feeder fund and the Subsequent Transferee. These include allegations that the parties "had significant U.S. connections by virtue of the Defendant's

communications with specific Feeder Fund offices, sales representatives, agents, employees, and/or other representatives located in the U.S," (Factor 13), or the Subsequent Transferee "participated in Feeder Fund management, and/or is an entity created by, or for the benefit of, Feeder Fund management." (Factor 16.)

The proffers discussed below rely heavily on these U.S. connections and include allegations that the U.S. agents or U.S. affiliates dominated and controlled the Subsequent Transferee, and actually conducted its operations. The Trustee cites *SEC v. Gruss*, No. 11 Civ. 2420, 2012 WL 3306166 (S.D.N.Y. Aug. 13, 2012) ("*Gruss II*") for support. (*See, e.g.*, *Trustee's Supplemental Memorandum of Law in Opposition to the Motion to Dismiss Based on Extraterritoriality Filed by Natixis S.A., Bloom Asset Holdings Fund, and Tensyr Limited, and in Further Support of Trustee's Motion for Leave to Amend*, dated June 26, 2015, at 11 n. 9 (stating that the *Gruss* court found that "issues of fact existed regarding whether an offshore fund was "foreign" for purposes of extraterritoriality where complaint alleged that operational and investment decisions for the offshore fund were made in New York, 'such that for all intents and purposes, the [offshore fund] was based in New York.'") ECF Adv. Pro. No. 10-05353 Doc. # 101).) *Gruss*, however, undercuts rather than supports the Trustee.

In *Gruss*, the defendant was the chief financial officer of DBZCO which managed several, separate hedge funds, including the Onshore Fund and the Offshore Fund, the latter a Cayman Islands fund. *SEC v. Gruss*, 859 F. Supp.2d 653, 655 (S.D.N.Y. 2012) ("*Gruss I*"). The defendant transferred money without authority from the Offshore Fund to the Onshore Fund. The transfers typically occurred between U.S. bank accounts and often involved a transfer to a U.S. entity. *Id.* at 656. The SEC brought an

enforcement action against the defendant alleging that the unauthorized transfers violated the Investment Advisers Act ("IAA").

The defendant moved to dismiss arguing, among other things, that the complaint was barred by the presumption against extraterritoriality. The District Court disagreed. It distinguished the SEC action under the IAA from the private law suit under the Exchange Act in *Morrison*, and concluded that *Morrison* did not apply. In support of its conclusion, the District Court cited section 929P(b) of the Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (2010). Section 929P(b), enacted after *Morrison*, which allows the SEC and U.S. Government to bring certain enforcement actions based on conduct in the United States or conduct outside the United States that has a "foreseeable substantial effect within the United States." *Id.* at 664 & n. 4. [21] The District Court speculated that section 929P(b) restored the "conduct and effects test" for actions brought by the SEC or the Department of Justice. *Id.* at 664 n. 4.

The District Court next concluded that even if *Morrison* applied, the SEC had rebutted the presumption against extraterritoriality because the transactions were domestic. The majority of Offshore Fund investors affected by the unauthorized

[21] Section 929P(b) amended the Securities Act of 1933, the Exchange Act and the IAA by granting the district court jurisdiction over actions or proceedings brought by the SEC or the United States involving "(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or (2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States." In *Parkcentral Global Hub Ltd. v. Porsche Automobile Holdings SE*, 763 F.3d 198 (2d Cir. 2014), the Court of Appeals questioned the import of the post-*Morrison* amendment. *Morrison* made clear that the already district court had subject matter jurisdiction even if the presumption against extraterritoriality meant it could not reach the merits. *Id.* at 211 n 11.

transfers were located in the United States and the investors in both funds were impacted by the fraud. *Id.* at 665. Moreover, the inter-fund transfers occurred domestically between U.S. bank accounts. *Id.* at 665-66.

The District Court then returned to the "conduct and effects test:" "the Complaint alleges other relevant facts that would have been dispositive under the conduct and effects test, which may have been revived with Section 929P(b) of the Dodd–Frank Act." *Id.* at 666. These allegations included New York-based DBZCO's activities relating to and control of the Offshore Fund. It made all operational and investment decisions, monitored its performance and compliance with all regulatory requirements, negotiated the terms of its contracts, retained and borrowed money on its behalf, distributed offering and subscription documents to potential investors and listed the Offshore Fund's address in care of DBZCO at DBZCO's New York address. In addition, accounting services for the Offshore Fund's investment and other activities were performed primarily in New York, DBZCO's investor relations personnel distributed financial and performance information to individual investors, and the Offshore Fund's cash was held at and paid from U.S. bank and brokerage accounts. *Id.*

The Complaint also included allegations quoting or paraphrasing statements in the offering memoranda and financial statements that showed a relationship between U.S.-based securities and the Offshore Fund's investors and investments. For example, the securities were marketed "to permitted U.S. persons . . . [and] to accredited investors and qualified purchasers, as defined by the U.S. securities laws," the investment objectives included investing in U.S. securities, and investors would be required to pay certain U.S. taxes for dividend income and certain other interest from

domestic investments, the auditors of the Offshore Fund were located in New York, investors were instructed to wire their subscription payments to a Citibank account in New York and DBZCO would send shareholders quarterly unaudited financial information from DBZCO. *Id.* The U.S.-based control, connections and decision-making cited by the District Court read like the Trustee's playbook; the same allegations permeate the Trustee's proffers.

Following the denial of the motion to dismiss, the defendant sought to certify an appeal to the Court of Appeals, arguing, *inter alia*, that the issue for certification presented a controlling question of law regarding extraterritoriality. The District Court denied the motion in *Gruss II*, observing that the controlling question was not purely legal and involved factual questions under the "conducts and effects" test. "For example, while the Offshore Fund's Offering Memoranda stated that it was a foreign entity governed by foreign law, the Complaint alleges that the actual 'operational and investment decisions for the Offshore Fund were all made ... in DBZCO's New York office such that for all intents and purposes, the Offshore Fund was based in New York.'" *Gruss II*, 2012 WL 3306166, at *3. This holding is the portion of the *Gruss II* decision cited by the Trustee to support his contention that the location of the U.S-based management and control are relevant to the question of extraterritoriality.

The Trustee's reliance ignores that the District Court's discussion related to the "conduct and effects" test that, it speculated, had been restored when the SEC or the Government brought the action. As far as the Trustee's subsequent transfer claims are concerned, the "conduct and effects test" was abrogated by *Morrison*, and he cannot rely on the allegations in *Gruss* that the District Court highlighted as relevant to the

extraterritoriality issues raised in that case. While the control or the management of a foreign transferor or transferee by a U.S. affiliate may support the inference that the entity resides in the United States in the limited circumstances discussed earlier, that conduct relating to the transfer occurred in the United States or occurred outside the United States with foreseeable U.S. effects is irrelevant to the extraterritorial analysis.

In the end, the *ET Decision* identifies only four possibly relevant facts to consider in determining whether the Trustee has rebutted the presumption against extraterritoriality: (i) the location of the account from which the transfer was made, (ii) the location of the account to which the transfer was made, (iii) the location or residence of the subsequent transferor and (iv) the location or residence of the Subsequent Transferee. The single most important factor in determining whether the presumption against extraterritoriality has been rebutted is obvious; where did the subsequent transfer – the exchange of cash and passage of title – occur.[22] If the subsequent transfer occurred domestically – from a U.S. account to a U.S. account (excluding a correspondent account) – it is a domestic subsequent transfer. As the Second Circuit explained in *Absolute*, foreign entities can engage in domestic transfers. Conversely, a foreign subsequent transfer between domestic entities is still a foreign subsequent transfer. In addition, where the situs of the subsequent transfer is not alleged, but the Trustee alleges that it occurred between U.S. residents, the *ET Decision* permits the Court to infer that the subsequent transfer was domestic.

[22] The Trustee did not include a factor addressing where the Subsequent Transferor became irrevocably bound to make the transfer to the Subsequent Transferee, presumably because the District Court focused exclusively on the location of the transfer.

Finally, I conclude that a transfer by a U.S. resident from a U.S. account even to a foreign transferee rebuts the presumption against extraterritoriality. The *ET Decision* did not address this possibility. This type of transfer is analogous to the initial transfers by BLMIS to foreign feeder funds. It is true that BLMIS was a U.S. citizen and made initial rather than subsequent transfers, but BLMIS' U.S. citizenship and the subsequent transferor's U.S. residence are analytically the same. No one has suggested that BLMIS' recovery of an avoided transfer from an initial transferee foreign feeder fund is barred by the presumption against extraterritoriality, and there is no reason to treat subsequent transfers by a U.S. resident from a U.S. bank account differently.

The relevant Chart factors are, therefore, few. Only one factor in the Chart, Factor 12, purports to identify instances in which the "Defendant utilized U.S. bank account to receive transfers (includes correspondent accounts maintained by Defendants in their own name at U.S. banks)." As noted, the District Court rejected the notion that the transfer using a U.S. correspondent account made the transfer domestic, and I am bound by that conclusion. The Chart does not include a corresponding factor that the subsequent transferor used a U.S. bank account in connection with the transfer, but the Trustee's proffers include numerous allegations to that effect. Two others touch on the location or residence of the transferor and the Subsequent Transferee. Factor 1 purports to identify the transferors that maintained their principal operations in the United States, suggesting that the United States was their principal place of business. Factor 19 corresponds to those transferees that the Trustee asserts maintained a U.S. office utilized in connection with the transfer. Finally, Factor 18 identifies U.S. citizens that received subsequent transfers.

3. The Disposition of the Motions to Dismiss and Leave to Amend

A substantial number of the Subsequent Transfer claims that were not dismissed on the ground of comity are subject to dismissal based on extraterritoriality and require scant comment. They do not include allegations that the Subsequent Transferee used a U.S. bank in connection with the transactions,[23] that the transferor maintained its principal operations in the United States, that the transferee is a U.S. citizen or that the transferee maintained a U.S. office utilized in connection with the transfer. The following subsequent transfer claims are dismissed on this basis of extraterritoriality:

Table 4

A.P. No.	Defendant-Transferee	Transferor
09-01364	Thema Fund Ltd.	Thema Wise Investments
09-01364	HSBC Securities Services (Luxembourg) S.A.	Alpha Prime Fund Ltd. (Bermuda); Hermes International Fund (BVI); Lagoon Investment Ltd. (BVI); Thema Fund Ltd. (BVI); Lagoon Investment Trust (BVI); Thema Wise Investments (BVI)
09-01364	HSBC Institutional Trust Services (Ireland) Ltd.	Thema International (Ireland)
09-01364	HSBC Securities Services (Ireland) Ltd.	Thema International Fund (Ireland)
09-01364	HSBC Institutional Trust Services (Bermuda) Limited	Alpha Prime Fund Ltd. (Bermuda); Hermes International Fund (BVI); Thema Fund Ltd. (BVI); Thema Wise Investments (BVI); Lagoon Investment Limited (BVI)
09-01364	HSBC Securities Services (Bermuda) Limited	Alpha Prime Fund Ltd. (Bermuda); Thema Fund Ltd. (BVI); Thema Wise Investments (BVI); Lagoon Investment Limited (BVI); Hermes International Fund (BVI);
09-01364	HSBC Fund Services (Luxembourg) S.A.	Hermes International Fund Ltd. (BVI)

[23] Although the Chart indicates in some cases that the defendant used a U.S. bank account in connection with the transaction, the relevant proffer or pleading does not allege that the subsequent transfer was made to a U.S. account.

A.P. No.	Defendant-Transferee	Transferor
09-01364	HSBC Bank Bermuda Limited	Alpha Prime Fund Ltd. (Bermuda); Hermes International Fund (BVI); Thema Fund Ltd. (BVI); Thema Wise Investments (BVI); Lagoon Investment Limited (BVI)
09-01364	Hermes International Fund Limited	Lagoon Investment Ltd. (BVI)
09-01364	Lagoon Investment Trust	Lagoon Investment Ltd. (BVI)
09-01364	Equus Asset Mgmt. Ltd	Thema Fund Ltd. (BVI); Thema International (Ireland); Thema Wise Investments (BVI)
09-01364	Hermes Asset Management Limited	Hermes International Fund (BVI); Lagoon Investment Ltd. (BVI); Lagoon Investment Trust (BVI)
09-01364	Thema Asset Mgmt. (Bermuda)	Thema Fund Ltd. (BVI); Thema Wise Investments (BVI)
09-01364	Thema Asset Management Limited (BVI)	Thema International (Ireland)
10-04285	UBS Third Party Management Company SA	Luxalpha SICAV (Lux.)
10-04285	Access International Advisors Ltd.	Groupement Financier Ltd. (BVI); Luxalpha SICAV (Lux.)
10-04285	Access Management Luxembourg SA (f/k/a Access International Advisors (Luxembourg) SA) as Represented by its Liquidator Maitre Fernand Entringer	Groupement Financier Ltd. (BVI); Luxalpha SICAV (Lux.)
10-04285	Access Partners SA as represented by its Liquidator Maitre Fernand Entringer	Groupement Financier Ltd. (BVI); Luxalpha SICAV (Lux.)
10-05120	Inter Investissements S.A. (f/k/a Inter Conseil S.A.)	Oreades SICAV (Lux.)
10-05311	M&B Capital Advisers Sociedad de Valores, S.A.	Landmark Investment Fund Ireland (Ireland); Luxembourg Investment Fund U.S. Equity Plus (Lux)
10-05311	Reliance Management (Gibraltar)Limited	Luxembourg Investment Fund U.S. Equity Plus (Lux.)
10-05311	UBS Third Party Management Company SA	Luxembourg Investment Fund U.S. Equity Plus (Lux.)

a. *Picard v. UBS AG*, Adv. Pro. No. 10-04285

The Chart identifies the following remaining subsequent transfer claims in this adversary proceeding:

Table 5

A.P. No.	Defendant-Transferee	Transferor
10-04285	UBS AG	Luxalpha SICAV (Lux.); Groupement Financier Ltd. (BVI)
10-04285	UBS (Luxembourg) SA	Groupement Financier Ltd. (BVI); Luxalpha SICAV (Lux.)
10-04285	UBS Fund Services (Luxembourg) SA	Groupement Financier Ltd. (BVI); Luxalpha SICAV (Lux.)
10-04285	Patrick Littaye	Groupement Financier Ltd. (BVI); Luxalpha SICAV (Lux.)
10-04285	Pierre Delandmeter	Groupement Financier Ltd. (BVI); Luxalpha SICAV (Lux.)

Luxalpha and Groupement Financier were BLMIS feeder funds. (*Proffered Second Amended Complaint*, dated June 26, 2015 at ¶2 ("*UBS Proffered SAC*") (ECF Adv. P. No. 10-04285 Doc. # 210).) According to the Chart, the Trustee does not contend that they maintained their principal operations in the United States or were citizens of the United States. (Factors, 1, 18.) Moreover, the *UBS Proffered SAC* alleges that Luxalpha was a Luxembourg fund, (*UBS Proffered SAC* at ¶ 55), and Groupement Financier was a BVI investment fund. (*Id*. at ¶ 61.) In addition, and with three exceptions discussed below, the Chart also indicates that the Subsequent Transferees did not use a U.S. office in connection with the transfers. Hence, the transfers took place between non-U.S. residents. To overcome the presumption against extraterritoriality, the Trustee must therefore allege facts showing that the actual transfer of funds occurred domestically.

The *UBS Proffered SAC* says little about the location of the subsequent transfers. It alleges that "[r]edemptions in U.S. dollars for Groupement Financier, Groupement Levered and Luxalpha were also processed through UBS S.A.'s account at UBS AG in Stamford, Connecticut," (*id.* at ¶ 97), and BLMIS sent Luxalpha redemption payments to UBS SA's account in Stamford, Connecticut and then to Luxalpha's bank account at UBS SA. (*Id.* at ¶ 173.) The proffer does not explain what "processing" a redemption means; either the redemptions were paid from a U.S. account to a U.S. account or they were not. Furthermore, where Luxalpha received its redemption payments from BLMIS relates to the initial transfer, not the subsequent transfer. The Trustee apparently assumes that if the feeder fund received the redemption in a U.S. account, it must have made the subsequent transfer from that U.S. account. The Trustee does not, however, allege that the subsequent transfers were made from the Connecticut account or another U.S. account or received in a U.S. account. Since the Trustee has failed to allege that these subsequent transfers between foreign entities was made domestically, he has failed to rebut the presumption against extraterritoriality and the claims are dismissed.

As to the exceptions, the Chart indicates that UBS AG maintains a U.S. office "utilized in connection with the transaction." The *UBS Proffered SAC* alleges that "UBS AG is a Swiss public company with registered and principal offices at Bahnhofstrasse 45, CH-8001 Zurich, and Aeschenvorstadt 1, CH-4051 Basel, Switzerland. UBS AG is the parent company of the global UBS bank, and is present in New York, with offices at 299 Park Avenue, New York, NY 10171 and 101 Park Avenue, New York, NY 10178. It also conducts daily business activities in Stamford, Connecticut and other locations in the United States." (*Id.* at ¶ 42.) In essence, the Trustee alleges that UBS AG is a foreign

corporation doing business in New York although he does not allege that it is registered to do business in New York or anywhere else in the United States. Furthermore, he does not allege that any subsequent transfer occurred domestically, and as the Subsequent Transferor was plainly foreign, he has failed to overcome the presumption that these transfers were extraterritorial.

The last two defendant Subsequent Transferees identified on the Chart are Pierre Delandmeter and Patrick Littaye. The *UBS Proffered SAC* alleges that Delandmeter is a citizen of Belgium, (*id*. at ¶ 53), a director of defendants Access Management Luxembourg S.A. and Access Partners S.A., each of which is a Luxembourg limited liability company (*id*. at ¶¶ 48, 49), and a director of non-party Access International Advisors Inc. ("AIA Inc."), a New York corporation. (*Id*. at ¶ 50.) He was also a "Legal Advisor" to Groupement and Groupement Levered, both foreign funds, and a "Director and Legal Advisor" to Luxalpha, a Luxembourg fund. (*See id*. at ¶¶ 53, 55.) The Trustee alleges that Delandmeter received legal fees from Luxalpha and Groupement, (*id*. at ¶ 292), and "upon information and belief," also received subsequent transfers from subsequent transferees AIA Ltd., AIA LLC, AP (Lux), and AML (f/k/a AIA (Lux)). (*Id*. at ¶ 292.)

The *UBS Proffered SAC* alleges Littaye is "a citizen of France," (*id*. at ¶ 50), but the parties have stipulated that he is located in Belgium. (*Scheduling Order*, Ex. 2, at 4.) Littaye was a co-founder, Partner, Chairman, and Chief Executive Officer and co-owner of AIA LLC, a director of Luxalpha and Groupement and Groupement Levered and co-owner of AIA Ltd., AML and Access Partners. (*UBS Proffered SAC* at ¶ 50.) According to the Trustee, Littaye "received millions of dollars of Subsequent Transfers, in an

amount to be proven at trial," "[a] significant amount of the Subsequent Transfers received by AIA Ltd., AIA LLC, AP (Lux), and AML (f/k/a AIA (Lux)) were subsequently transferred to Littaye . . . either directly or indirectly, in the form of distributions, payments, or other transfers of value," and "upon information and belief," Littaye received at least $6.5 million in compensation "from bank accounts controlled by Access's New York office." (*Id.* at ¶ 291.)

As with the case of the other subsequent transfers, the *UBS Proffered SAC* does not allege the location of the transferor or transferee accounts or that the subsequent transfers occurred domestically.

Consequently, all of the Subsequent Transfer claims appearing on the Chart that relate to this adversary proceeding are dismissed.

b. Tremont and the Rye Funds

Tremont operated a group of BLMIS feeder funds all of which had some variation of a name that included "Rye Select Broad Market" (collectively, the "Rye Funds"). Certain Rye Funds that included "Portfolio" in their names – Rye Select Broad Market Portfolio Limited ("Rye Portfolio"), Rye Select Broad Market XL Portfolio Limited ("Rye XL Portfolio") and Rye Select Broad Market Insurance Portfolio LDC ("Rye Insurance Portfolio") – were registered in the Cayman Islands, and are sometimes collectively referred to as the "Rye Cayman Funds." Three other Rye funds – Rye Select Broad Market Fund L.P. ("Rye Broad Market"), Rye Select Broad Market XL Fund L.P. ("Rye XL") and Rye Select Broad Market Prime Fund L.P. ("Rye Prime Fund") – were formed in Delaware, and are sometimes collectively referred to as the "Rye Delaware Funds,"

and with the Rye Cayman Funds, the "Rye Funds." (*See Proffered Second Amended Complaint*, dated June 26, 2015 ("*HSBC Proffered SAC*") at ¶¶ 388-90 (ECF Adv. P. No. 09-01364 Doc. # 399).)

The Rye Cayman Funds exemplify feeder funds organized under foreign law that had no connection, from an operational standpoint, with their country of organization. Several proffered pleadings submitted by the Trustee discuss their principal places of operations. The *HSBC Proffered SAC* is typical. According to the Trustee, the Rye Funds were managed from and maintained their principal places of business and headquarters in Rye, New York. (*Id*. at ¶ 392.) Tremont's New York employees, among other things, conducted the Rye Funds' marketing, operations, diligence, and their communications with investors, (*id*. at ¶ 393), and served on their boards. (*Id*. at ¶ 395.) The Rye Cayman Funds had "registered offices" in the Cayman Islands, but had no operating offices or operations there, (*id*. at ¶ 392), and as "exempted" companies, could not solicit or accept investments from Cayman Island investors. (*Id*. at ¶ 394.) Finally, Rye Funds maintained their accounts at the Bank of New York where they received subscriptions and from which they paid redemptions. (*See id*. at ¶ 396; *see also Trustee's Proffered Allegations Pertaining to the Extraterritoriality Issue as to Mistral (SPC)*, dated June 26, 2015 ("*Mistral Proffer*"), at ¶ 46 (alleging that beginning in the fall of 2006 if not earlier, Tremont closed the Rye Cayman Funds' Bermuda-based bank accounts, and thereafter made every redemption payment from the fund's New York-based accounts at the Bank of New York) (ECF Adv. Pro. No. 12-01273 Doc. # 57).)

The Rye Cayman Funds had to operate from somewhere if not the Cayman Islands. Although the Trustee does not allege that the Rye Cayman Funds were

registered to do business in New York, the Court concludes that the Trustee has adequately alleged that they maintained their principal and only operations in New York and that they therefore resided in New York. In addition, they made the subsequent transfers at issue at least since the fall of 2006 if not earlier from an account located in New York.

Furthermore, and with certain exceptions discussed in footnotes 27 and 32, the proffers allege that the subsequent transfers were received in a U.S.-based bank account or support the inference that they were received in a U.S.-based account based on the provisions of the subscription/redemption agreements requiring that redemptions be paid to a U.S.-account. The following table summarizes the latter group of transfers:

Table 6

A.P. No.	Transferee	ECF Doc. No. of Proffer	Proffer Reference

09-01364[24]	HSBC Bank plc	399	¶ 421[25]
10-05120	BNP Paribas Securities Services, S.A.	73	¶ 92[26]
12-01576	BNP Paribas Securities Services, S.A.; BNP Paribas Bank & Trust Cayman Ltd.; BNP Paribas Arbitrage SNC[27]	64	¶ 92
10-05354	ABN AMRO BANK N.V., p/k/a Royal Bank of Scotland, N.V.	101	¶¶ 65-69[28]

[24] According to the Chart, this adversary proceeding also involves a subsequent transfer from Thema International Fund plc ("Thema") to HSBC Bank plc. Although the Chart indicates that Thema International maintained its principal operations in the United States, Thema International is an Irish entity, (*HSBC Proffered SAC* at ¶ 64), and I have been unable to locate a factual allegation in the 141-page *HSBC Proffered SAC* that Thema International maintained its principal operations in New York. Furthermore, the Chart does not indicate that HSBC Bank plc used a U.S. office in connection with the transaction. Accordingly, the subsequent transferor and Subsequent Transferee are foreign entities that did not reside in the United States. According to the *HSBC Proffered SAC,* following a redemption request, Thema received $14,094,388.97 in a N.Y.-based HSBC Bank USA account for the benefit of HSBC Bank plc, (*id.* at ¶¶ 540-41), and subsequently transferred the same amount to HSBC plc. (*Id.* at ¶¶ 542-43.) It is not entirely clear whether the *HSBC Proffered SAC* is alleging that HSBC Bank plc was BLMIS' initial transferee with Thema acting as its agent, or Thema's subsequent transferee. If the latter, the Trustee has failed to rebut the presumption against extraterritoriality and the claim is dismissed. Although the *HSBC Proffered SAC* implies that Thema made the subsequent transfer from a N.Y.-based custodial account, it does not identify the location of the transferee account. Thus, the only U.S. connection is the source of the subsequent transfer, and this is insufficient based on the criteria discussed earlier.

The Chart also lists two transfers from BLMIS to Thema International and Lagoon Investment. These appear to be initial transfers, not Subsequent Transfers, and are beyond the scope of the *ET Decision*, which interpreted 11 U.S.C. § 550(a)(2).

[25] Paragraph 421 states in relevant part: "HSBC Bank plc received at least $53,000,000 from Rye XL Portfolio to HSBC Bank plc's account at HSBC Bank USA."

[26] Paragraph 92, which applies to all of the BNP entities listed in the table, states in relevant part: "Defendants executed subscription agreements for investments in the Tremont Funds that were domestic in nature.. . . . [T]he subscription agreements requested that Tremont direct redemptions to BNP's bank account in New York."

[27] Despite its listing in the Chart, the Complaint does not allege that any Rye Cayman Fund made a subsequent transfer to BNP Paribas Securities Services Succursale de Luxembourg, and it is not mentioned in the Trustee's Proffer. This defendant was included in the motion to dismiss, and accordingly, any claims arising from alleged subsequent transfers by a Rye Cayman Fund to this BNP entity are dismissed.

In addition, Complaint alleges claims arising from subsequent transfers by a Rye Cayman Fund to BNP Paribas Bank & Trust (Canada) ("BNP Canada"), a Canadian entity, which was also included in the motion to dismiss but omitted from the Trustee's opposition and the Proffer. These subsequent transfer claims are also dismissed.

[28] Paragraphs 65-69 state in relevant part:

> 65. ABN/RBS instructed Tremont to make all transfers in connection with the 2006 Transactions to ABN/RBS's bank account in New York. In the 2006 Swap Confirmation, ABN/RBS instructed Tremont to make all payments to ABN/RBS via a bank account that ABN/RBS held at its New York branch; ABN/RBS received all payments from Rye Portfolio Limited XL in its New York account. In connection with ABN/RBS's investment

12-01273	Mistral (SPC)	57	¶¶ 18-19[29]
12-01278	Zephyros Limited	58	¶¶ 20-21[30]
12-01698	RBC Dexia Investor Services Trust	57	¶ 28[31]

in Rye Portfolio Limited, Subscription Agreements provided that redemption payments would be made to ABN/RBS's bank account at its New York branch; ABN/RBS received all payments from Rye Portfolio Limited in its New York account. Accordingly, every one of the subsequent transfers at issue was sent from the Tremont Funds' bank accounts in New York to ABN/RBS's bank account in New York.

66. ABN/RBS maintained a bank account at its ABN AMRO Bank NV New York Branch in New York, which was a "resident of the United States" according to its July 2008 USA Patriot Act Certification. ABN/RBS designated that account . . . in the 2006 Transactions to receive both collateral and redemption payments – the subsequent transfers at issue – from the Tremont Funds.

67. With respect to the 2006 Transactions, Rye Portfolio Limited XL utilized its bank account at the Bank of New York to transfer each of the collateral payments at issue to ABN/RBS's bank account at its New York Branch.

68. Likewise, Rye Portfolio Limited utilized its account at the Bank of New York to transfer each redemption payment to ABN/RBS at its New York bank account.

69. Similarly, with regard to the transfers sent and received in connection with the 2007 Transactions, ABN/RBS designated its bank account at its ABN AMRO Bank NV New York Branch to receive both collateral and redemption payments from the Tremont Funds. Utilizing their bank accounts at the Bank of New York, Rye Broad Market XL and Rye Broad Market – the Tremont Funds involved with the 2007 Transactions – made transfers of collateral and redemption payments to ABN/RBS's bank account at its New York Branch.

[29] Paragraphs 18-19 state in relevant part: "New York or New Jersey was the situs selected by Mistral for making and receiving such transfers. Specifically, Mistral used a bank account at the Northern Trust International Banking Corporation in New York or New Jersey to effect such payments (the "U.S. Account"). . . . With respect to Rye Portfolio Limited, Mistral designated such use of this U.S. Account in subscription and redemption documents. . . ."

[30] Paragraphs 20-21 state in relevant part: "The United States was the situs selected by Zephyros for making and receiving such transfers. Specifically, Zephyros used the bank account of its U.S.-based administrator/custodian SEI at Wachovia National Bank in the United States to effect such payments (the "U.S. Account"). . . . Zephyros designated such use of the U.S. Account in a Fairfield Sentry subscription agreement and in Rye Portfolio Limited redemption documents . . . ."

[31] Paragraph 28 states: "Upon information and belief based on the other RBC-Dexia entities' designations of their own U.S. bank account (by and large at Citibank in New York), RBC-Dexia Trust similarly designated and received its redemptions from Rye Portfolio Limited into a bank account in the United States."

12-01699	Guernroy Limited[32]	54	¶¶ 28-29[33]

Several of the Subsequent Transferees contend that the Trustee failed to allege that the bank accounts used to effect the subsequent transfers were not correspondent accounts, and he therefore failed to allege a domestic transaction.[34] (*See Reply Memorandum in Further Support of the BNP Paribas Defendants' Motion to Dismiss Based on Extraterritoriality*, dated Sept. 30, 2015, at 2, 10, 25 (ECF Adv. Pro. No. 10-04457 No. Doc. # 93).) The *ET Decision* does not suggest that the Trustee must allege

[32] The Chart includes the defendant Royal Bank of Canada (Channel Islands) Limited ("RBC-CI"), and the Complaint, Ex. N, alleges that Rye Portfolio subsequently transferred $4,637,106 to "Guernroy or RBI-CI." (*See also Complaint*, dated June 6, 2012 at ¶ 86 (ECF Adv. P. No. 12-01699 Doc. # 1).) The Proffer alleges that the RBC-CI's New York accounts at Deutsche Bank and JP Morgan Chase Bank received redemptions for other entities, (*Trustee's Proffered Allegations Pertaining to the Extraterritoriality Issue as to Royal Bank of Canada*, dated June 26, 2015 at¶ 29(ECF Adv. P. No. 12-01699 Doc. # 54)), but does not allege that RBC-CI received any redemptions in its own name. The motion to dismiss included claims alleging subsequent transfers from Rye Portfolio to RBC-CI; these claims are dismissed and leave to amend is denied.

[33] Paragraphs 28-29 state in relevant part: "New York was the situs repeatedly selected by Defendants for both receiving redemptions and remitting subscriptions. . . . RBC-Guernroy also used an account in RBC-CI's name at JPMorgan Chase Bank in New York to receive redemptions from . . . Rye Portfolio Limited. . . ."

[34] After briefing, the Trustee apprised the Court of the decision in *Official Comm. of Unsecured Creditors of Arcapita, Bank B.S.C. v. Bahrain Islamic Bank*, 549 B.R. 56 (S.D.N.Y. 2016), and implied that it undercut the *ET Decision*'s conclusion that the use of a correspondent bank account did not support a domestic transfer. (*Letter from David J. Sheehan, Esq. to the Court*, dated Apr. 7, 2016 (ECF Doc. # 13051).) In *Arcapita*, the Official Committee of Unsecured Creditors (the "Committee") brought a preference action, seeking to avoid and recover preferential transfers that had been made to the defendants' New York correspondent bank accounts. The defendants moved to dismiss for lack of personal jurisdiction. The District Court concluded that the use of New York correspondent accounts supported the assertion of personal jurisdiction, *id.* at 68; *accord Licci v. Lebanese Canadian Bank, SAL*, 984 N.E.2d 893, 900 (N.Y. 2012), and added that "if preferential transfers are found to have occurred, they occurred at the time the funds were transferred into the New York correspondent bank accounts." *Arcapita*, 549 B.R. at 70.

As the Second Circuit indicated in *Absolute,* whether sufficient contacts with the United States support the assertion of personal jurisdiction is a different question from whether a transaction is domestic for purposes of extraterritoriality. The use of a U.S. correspondent bank account to process a dollar-denominated transaction may confer personal jurisdiction over the transferee but under the *ET Decision*, does not render an otherwise foreign transfer domestic. *Arcapita* does not modify the District Court's conclusion.

the use of a non-correspondent bank account to survive the dismissal of his subsequent transfer claims. While the claims may not ultimately survive for this reason, that must await future development of the facts which go outside the record and cannot be considered on this motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Accordingly, the motions to dismiss the claims included in Table 6 are denied and leave to amend is granted to the extent of these claims.

c. Fairfield Greenwich

Two of the adversary proceedings (Nos. 12-01701 and 12-01702) involve subsequent transfers by Fairfield Greenwich (Bermuda) Ltd. ("Fairfield Bermuda") and Fairfield Greenwich Ltd. (Cayman Islands) ("Fairfield Cayman"), both organized under foreign law (Bermuda and the Cayman Islands, respectively). They were part of FGG. They received fees from FGG feeder funds, including Greenwich Sentry, L.P., and Greenwich Sentry Partners, L.P. (collectively, "Greenwich Sentry") and Fairfield Sentry, and distributed the fees to FGG partners. (*Trustee's Proffered Allegations Pertaining to the Extraterritoriality Issue as to Defendants SafeHand Investments, Strongback Holdings Corporation, and PF Trustees limited in its Capacity as Trustee of RD Trust*, dated June 26, 2015 ("*SafeHand Proffer*"), at ¶¶ 2-4 (ECF Adv. Proc. No. 12-01701 Doc. # 62); *see Proffered Allegations Pertaining to the Extraterritoriality Issue as to Defendants Dove Hill Trust and FG Investors Ltd.*, dated June 26, 2015 ("*Dove Hill Proffer*"), at ¶¶ 3-5 (ECF Adv. Proc. No. 12-01702 Doc. # 61).) To the extent they received fees from or originating with the Fairfield Sentry (or Fairfield Lambda or Fairfield Sigma), the subsequent transfer claims are barred under the doctrine of comity. The balance of the discussion concerns the transfers that originated with other

feeder funds, including Greenwich Sentry, that were not the subject of foreign liquidation proceedings.[35]

Fairfield Cayman maintained its principal place of business in New York, (*SafeHand Proffer* at ¶ 13; *Dove Hill Proffer* at ¶¶ 4, 32), and "operated out of FGG's New York headquarters." (*SafeHand Proffer* at ¶ 3, *accord id.* at ¶ 6.) Although "formed under foreign law, it reported its principal place of business as FGG's New York headquarters, *registered to do business in the State of New York*, and listed its principal executive office as FGG's New York headquarters," (*SafeHand Proffer* at ¶ 40 (emphasis added); *accord* (*Dove Hill Proffer* at ¶ 36; *Fairfield Proffered SAC* ¶ 258))[36], and never had employees or an office in the Cayman Islands or in Ireland, where it was initially organized. (*Dove Hill Proffer* at 36.) Fairfield Cayman is similar to the Rye Cayman Funds, and accordingly, the Trustee has alleged that Fairfield Cayman resides in New York.

On the other hand, the Trustee has failed to allege that Fairfield Bermuda maintained its principal operations or principal place of business in New York or the United States. Fairfield Bermuda provided risk management services and acted as placement agent to a number of FGG investment vehicles and feeder funds and also allegedly provided investment advisory services to Fairfield Sentry. (*Fairfield Proffered*

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35 The Greenwich Sentry entities were both Delaware limited partnerships, and debtors in jointly administered chapter 11 proceedings in this Court. (*See In re Greenwich Sentry, L.P.*, Case No. 10-16229 (SMB).)

36 The *Fairfield Proffered SAC* refers to the *Proffered Second Amended Complaint*, dated June 26, 2015 (ECF Adv. P. No. 09-1239 Doc. # 187). The allegations in the *Fairfield Proffered SAC* are incorporated by reference in the *SafeHand Proffer* at ¶ 47 and the *Dove Hill Proffer* at ¶ 60.

SAC at ¶ 56.) Although the Trustee avers that Fairfield Bermuda "operated out of FGG's New York headquarters," (*SafeHand Proffer* at ¶ 3; *accord id.* at ¶ 6; *see id.* at ¶ 42), he also alleges that it had a small number of employees in Bermuda and rented a small office there. (*SafeHand Proffer* at ¶ 42; *Dove Hill Proffer* at ¶ 43; *Fairfield Proffered SAC* at ¶¶ 273-74.) The Bermuda employees performed some risk analysis on the Fairfield Sentry assets but reported to FGG New York personnel. (*Fairfield Proffered SAC* at ¶ 199.) Fairfield Bermuda also maintained a bank account in Bermuda. (*Id.* at ¶ 272.) Unlike Fairfield Cayman, Fairfield Bermuda did not report its principal place of business as New York, and in a marketing publication entitled "The Firm and Its Capabilities," at 7, FGG listed Fairfield Bermuda's office address as Suite 606, 12 Church Street, Hamilton Bermuda HM11.[37] Finally, the Trustee alleged in the Amended Complaint, dated July 20, 2010, at ¶ 121 (Adv. Pro. No. 09-01239 ECF Doc. # 23) filed in *Picard v. Fairfield Sentry Limited*, that Fairfield Bermuda maintained its principal place of business in Hamilton, Bermuda.

i. *Picard v. SafeHand Inv.*, Adv. Pro. No. 12-01701

A. The Parties

The Chart identifies three defendant Subsequent Transferees, SafeHand Investments ("SafeHand"), Strongback Holdings ("Strongback") and PF Trustees Limited in its capacity as trustee of RD Trust ("PF" and collectively with SafeHand and Strongback, the "Piedrahita Entities"). The Piedrahita Entities were formed by Andrés

[37] A copy of "The Firm and Its Capabilities" is attached to the *Declaration of Jeffrey E. Baldwin in Support of FG Foreign Defendant Motion to Dismiss Based on Extraterritoriality*, dated Sept. 30, 2015, as Exhibit 3 (ECF Adv. Proc. No. 12-01701 Doc. # 68). The Trustee quoted from it in the *Fairfield Proffered SAC* at ¶¶ 426-27.

Piedrahita, a founding partner of FGG, to receive his partnership distributions from FGG. (*SafeHand Proffer* at ¶ 1.) The fees charged investors in Fairfield Sentry and Greenwich Sentry were funneled to Fairfield Cayman and Fairfield Bermuda, and then distributed to Piedrahita through SafeHand, Strongback and PF. (*Id.* at ¶¶ 3-5, 7, 14.) To protect the hundreds of millions of distributions he ultimately received, Piedrahita moved his profit distributions into entities like these three defendants created in foreign countries. (*Id.* at ¶ 15.) According to the Trustee, the Piedrahita Entities and Piedrahita received $219,004,944. (*Id.* at ¶ 14.)

Piedrahita was a citizen of the Republic of Colombia and the United Kingdom, but resided in the United States for most of his adult life and obtained permanent resident status. (*SafeHand Proffer* at ¶¶ 9-10.) At all relevant times, the Piedrahita Entities were Cayman Island entities. (*Id.* at ¶¶ 16, 21, 25.)[38] The *SafeHand Proffer* indicates that Piedrahita controlled the Piedrahita Entities. It further alleges that SafeHand maintained a P.O. Box as its registered address in the Cayman Islands, and implies that it did not have any employees or offices other than the post office box. (*Id.* at ¶ 16.) Furthermore, as an exempt company, it could not engage in business in the Cayman Islands except to further its business interests outside of the Cayman Islands, (*id.*), and when Piedrahita formed SafeHand he indicated to the U.S. Government that SafeHand was a "foreign eligible entity with a single owner electing to be disregarded as a separate entity." (*Id.* at ¶ 17 (internal quotation marks omitted).) The Trustee concludes form this election that SafeHand effectively served as Piedrahita's later ego.

[38] Strongback was formed in the Cayman Islands in November 2001, but was subsequently deregistered in December 2011 and reregistered in Malta. All of the subsequent transfers at issue occurred while it was a Cayman Islands entity.

(*Id.*) These allegations imply that SafeHand conducted no operations in the Cayman Islands, and to the extent it conducted any operations, it did so through Piedrahita in the United States.

The *SafeHand Proffer* did not include similar allegations regarding Strongback and PF that would support the conclusion that they reside in the United States. Although it includes the conclusory allegation that Strongback served as Piedrahita's alter ego, (*id.* at ¶ 22), it does not allege where it maintained an office or whether it had any employees. PF was also a Cayman Islands entity with a registered office at the same address as SafeHand, (*id.* at ¶ 26), and is now the sole owner of SafeHand. (*Id.* at ¶ 28.) The *SafeHand Proffer* does not otherwise include allegations pertaining to its operations, offices or employees, if any.

B. The Subsequent Transfers

The allegations regarding the transfers are confusing. Initially, the *SafeHand Proffer* alleges that Fairfield Cayman made the subsequent transfers from a New York account, (*id.* at ¶ 13), but does not identify the location of the account that was the source of the Fairfield Bermuda payments. The Trustee alleges that SafeHand received $212,777,342 in distributions from Fairfield Cayman and $6,227,602 in distributions from Fairfield Bermuda, (*id.* at ¶ 20), and SafeHand received those payments in a New York *correspondent* account in New York. (*Id.* at ¶ 18.) The amount allegedly paid to SafeHand corresponds to the amounts allegedly received by all three Piedrahita

Entities.[39] (*See id.* at ¶ 14.) In addition, although the *SafeHand Proffer* states that subsequent transfers were deposited in Strongbacks' New York account at Wachovia Bank in New York, (*id.* at ¶ 24), the proffer does not allege the amount of those subsequent transfers, and the schedule of subsequent transfers made to Strongback that is attached to the Amended Complaint is blank. (*See Amended Complaint*, App'x III, Ex. B.) Accordingly, the Trustee does not identify any subsequent transfers made to Strongback. The Trustee's failure to allege any domestic subsequent transfers to Strongback fails to rebut the presumption against extraterritoriality, and any such claims are dismissed.

The claims against PF seemed to be based solely on its status as the parent of SafeHand. (*See SafeHand Proffer* at ¶ 28 ("RD Trust is now the sole owner of Safehand. Thus, PF Trustees in its capacity as trustee of RD Trust, owns and is in possession of all transfers that were received by Safehand.").) The *SafeHand Proffer* does not identify any subsequent transfers to PF in its own name, and an exhibit to the Amended Complaint indicates that SafeHand "and/or" PF received $172,631,780 in subsequent transfers. (*Amended Complaint*, App'x III, Ex. A.) The Trustee has not alleged a domestic subsequent transfer to PF, and has not articulated a basis to pierce SafeHand's corporate veil, which is presumably governed by Cayman Islands law, and hold PF liable for the transfers to SafeHand. Accordingly, the Trustee has failed to rebut the

[39] Much of this amount originated from fees paid by Fairfield Sentry. (*See Amended Complaint*, dated May 31, 2013 ("*Amended Complaint*"), App'x II, Ex. C; App'x II, Ex. D (ECF Adv. P. No. 12-01701 Doc. # 13).)

presumption against extraterritoriality, and the subsequent transfer claims asserted against PF are also dismissed.

This leaves SafeHand. As noted, the transfers that originated with the Fairfield Funds are dismissed on grounds of comity. The transfers from Fairfield Cayman were made by a U.S. resident from a U.S. account. Although SafeHand received the subsequent transfers in a correspondent account, the allegations are sufficient under the criteria discussed above to rebut the presumption against extraterritoriality. Hence, the motion to dismiss these claims is denied.

The claims alleging subsequent transfers from Fairfield Bermuda are dismissed. They were made by a foreign entity, the Trustee does not allege that they were made from a U.S. bank account, and they were made to correspondent bank account. SafeHand's residence, the only connection to the United States, is insufficient to rebut the presumption of extraterritoriality.

ii. *Picard v. Barreneche, Inc.*, Adv. Pro. No. 12-01702

A. FG Investors

FG Investors was created by Charles Murphy, an FGG partner, to receive distributions from FGG, (*Dove Hill Proffer* at ¶ 1), and operated in the same manner and for the same purposes as the Piedrahita Entities. (*See id.* at ¶¶ 4-5.) FG Investors was formed under Cayman Islands law but controlled by Murphy, a U.S. citizen and New York resident, from New York. (*Dove Hill Proffer* at ¶¶ 9-12.) The *Dove Hill Proffer* does not allege where or whether it maintained offices or operations, or whether it employed anyone.

According to the *Dove Hill Proffer*, FG Investors received at least $5,941,335 from Fairfield Cayman to FG Investors and at least $675,700 from FG Bermuda. A substantial portion of the transfers originated from Fairfield Sentry, (*Complaint*, dated June 6, 2012, ("*Complaint*") App'x II C (ECF Adv. P. No. 12-01702 Doc. # 1)), and are not recoverable on grounds of comity. As in SafeHand's case, the Fairfield Cayman subsequent transfers were made from its New York account at JP Morgan Chase. (*Dove Hill Proffer* at ¶ 17; *see id.* at ¶ 37.) The *Dove Hill Proffer* does not, however, allege where FG Investors received the subsequent transfers. Nevertheless, the Trustee alleges that the transfers were made by an entity registered to do business in New York from a New York account, and as in the case of SafeHand, the allegations are sufficient to rebut the presumption against extraterritoriality. Hence, the motion to dismiss these claims is denied.

The claims alleging subsequent transfers from Fairfield Bermuda to FG Investors are dismissed for the same reasons discussed in connection with SafeHand. Unlike Fairfield Cayman, *Dove Hill Proffer* does not allege facts showing that Fairfield Bermuda resided in the United States or made the subsequent transfers from a U.S. account, and as noted, does not allege where FG Investors received the transfers.

B. Dove Hill Trust

Dove Hill Trust ("DHT") was created by Yanko della Schiava, a FGG sales employee, to receive salary and bonus payments from FGG. (*Dove Hill Proffer* at ¶¶ 1, 22, 27.) He was also a Fairfield Sentry investor, and DHT received a redemption payment. (*Id.* at ¶ 22.) The proffer does not allege where DHT was formed or maintained its principal place of business. However, the *Complaint* alleged that Asiaciti

Trust Singapore Pte Ltd. acted as DHT's trustee and maintained its location at 163 Penang Road, #02-01 Winsland House II, Singapore, 238463. (*Complaint* at ¶ 76.)

The proffer alleges that Fairfield Cayman transferred at least $400,000 to DHT, (*Dove Hill Proffer* at ¶ 7), although an exhibit annexed to the *Complaint* identifies only one transfer in the amount of $59,039. (*Complaint*, App'x III, Ex. B.) As noted earlier, Fairfield Cayman was registered to do business in New York and made its subsequent transfers from New York-based bank accounts. (*Dove Hill Proffer* at ¶ 30.) The *Dove Hill Proffer* further alleges that DHT used New York bank accounts "in connection with the transfers at issue," (*id.* at ¶ 29), but does not allege, unlike the allegations in many other proffers, that Dove Hill received the transfers in a U.S. Account. Nevertheless, the transfers were made by a U.S. resident from a N.Y. account, the Trustee has rebutted the presumption against extraterritoriality and the motion to dismiss these claims is denied.

d. Remaining Claims

i. *Picard v. Cardinal Mgmt., Inc.*, Adv. Pro. No. 10-04287

The parties have stipulated that Cardinal Management, the subsequent transferor, and Dakota Global Investments, the Subsequent Transferee, are foreign entities, (*Scheduling Order*, Ex. A at 8), and neither the Chart nor the proffer, (*see Trustee's Proffered Allegations Pertaining to the Extraterritoriality Issue as to Dakota Global Investments, Ltd.*, dated June 26, 2015 (ECF Adv. P. No. 10-04287 Doc. # 69)), indicates that either maintained offices in the United States. The only arguably pertinent allegation in the proffer is that "Dakota's agents also had Cardinal on occasion utilize a U.S. branch of Wachovia Bank to facilitate its transfers of money from BLMIS." (*Id.* at ¶ 19.) This statement refers to the initial transfer from BLMIS to Cardinal, not

the subsequent transfers from Cardinal to Dakota. The Trustee has failed to rebut the presumption against extraterritoriality, and the claim is dismissed.

ii. *Picard v. Equity Trading Portfolio, Ltd.*, Adv. Pro. No. 10-04457

The Trustee alleges that Equity Trading Portfolio Ltd. ("Equity Portfolio"), a BVI entity, (*BNP Proffer* at ¶ 147 (ECF Adv. P. No. 10-04457 Doc. # 90)),[40] and a BLMIS customer, subsequently transferred $15 million to BNP Paribas Arbitrage SNC ("BNP Arbitrage"). (*Id.*) The Trustee does not indicate in the Chart that Equity Portfolio maintained its principal operations in the United States (Factor 1), and the *BNP Proffer* does not allege otherwise.

The Trustee alleges that BNP Arbitrage resides in New York with offices located at 787 Seventh Avenue. (*Id.* at ¶ 5.) However, the Trustee alleged in the Complaint, dated Nov. 30, 2010 (ECF Adv. P. No. 10-04457 Doc. # 2), that BNP Arbitrage was organized under the laws of France and maintained an office in Paris with no mention of New York. (Complaint at ¶ 13.) Furthermore, the *BNP Proffer* incorporated the Complaint by reference, (*BNP Proffer* at ¶ 158), and thus, the Trustee has made contradictory allegations on this point without any effort to explain the contradiction.

Nevertheless, even if the transferor and transferee did not reside in the United States, the *BNP Proffer* alleges that the subsequent transfer was wholly domestic. BLMIS wired a $15 million redemption payment to an HSBC account in New York "held in the name of Citco Bank Nederland N.V., Dublin Branch for the benefit of Equity

[40] This is the same *BNP Proffer* referred to earlier. The Trustee submitted this proffer in four adversary proceedings.

Portfolio," and "Equity Portfolio transferred $15 million into an account held by BNP in New York on behalf of BNP Arbitrage." (*Id.* at ¶ 162.) As noted in an earlier citation to their response, BNP Defendants contend that the Trustee did not allege the use of non-correspondent accounts, but I do not read the *ET Decision* to impose that pleading burden on the Trustee. Accordingly, the motion to dismiss this subsequent transfer claim is denied, and leave to amend is granted.

iii. *Picard v. Radcliffe Inv., Ltd.*, Adv. Pro. No. 10-04517

The Trustee contends that Radcliffe Investments Limited made a subsequent transfer to Rothschild Trust Guernsey Limited ("Rothschild Trust"). As alleged in the *Proposed First Amended Complaint*, dated June 26, 2015 ("*Radcliffe Proposed FAC*")(ECF Adv. P. No. 10-04517 Doc. # 46), Radcliffe opened an account number 1FR-100 (the "Account") with BLMIS, but was a "mere passive investment vehicle," (*id.* at ¶ 44), and Rothschild Trust managed, controlled and actually owned the Account. (*Id* at ¶¶ 8-9.) Radcliffe was formed under the laws of the Cayman Islands, and maintained its registered office in Georgetown, Cayman Islands. (*Id.* at ¶ 8.) Rothschild Trust was incorporated under the laws of Guernsey, and maintained its principal place of business in Guernsey. (*Id.* at ¶ 9.) The defendant Robert D. Salem, a London businessman, was the ultimate beneficiary of the transfers at issue. (*Id.* at ¶ 10.) Mr. Salem is in default, (*id.* at ¶ 10 n. 2), and will not be mentioned further. The *Radcliffe Proposed FAC* further alleges, "[u]pon information and belief, that Radcliffe was owned by a Guernsey-based trust, and Rothschild Trust was the trustee of the Guernsey-based trust. (*Id.* at ¶ 8.) The *Radcliffe Proposed FAC* does not allege, and the Chart does not indicate, that either Radcliffe or Rothschild maintained an office or conducted business operations in the

United States other than the ownership of and the activities relating to Radcliffe's BLMIS account.

On or about May 31, 2007, Rothschild Trust directed BLMIS to close the Account and transfer the proceeds to the Rothschild Trust account at JP Morgan Chase Bank. "Upon information and belief, the routing number for the [Rothschild] Trust Account is only used for accounts opened in New York with U.S. banking institutions." (*Id.* at ¶¶ 46-47.) On June 5, 2007, BLMIS wired $7,120,054, of which $2,120,054 represented fictitious profits. (*Id.*, Ex. B, at 7.) The Trustee alleges that a similar letter was sent to BLMIS on or about October 31, 2007, (*id.* at ¶ 46), but the last transfer occurred on September 20, 2007, (*id.*, Ex. B, at 8), and no transfer was made in response to the October letter.

Under Bankruptcy Code § 550(a), the Trustee can recover an avoided transfer from the initial transferee or the entity that benefitted from the initial transfer, *id.* §550(a)(1), or from a subsequent transferee. *Id.*, § 550(a)(2). The Trustee asserts all three theories against Rothschild Trust; the initial transfer was made to the Rothschild Trust, (*Radcliffe Proposed FAC* at ¶ 39), (2) the initial transfer was made for the benefit of the Rothschild Trust, (*id.* at ¶ 39), and (3) upon information and belief, the Rothschild Trust is the subsequent transferee of Radcliffe. (*Id.* at ¶ 41.) The three theories are mutually exclusive, *see Bonded Fin. Servs., Inc. v. European Am. Bank*, 838 F.2d 890, 895-966 (7th Cir. 1988); *SIPC v. BLMIS* (*In re BLMIS*), 531 B.R. 439, 474 (Bankr. S.D.N.Y. 2015), and Rothschild Trust's possible status as the initial transferee or the entity for whose benefit the initial transfer was made is beyond the scope of the *ET Decision*.

The *Radcliffe Proposed FAC* does not identify a subsequent transfer because it does not identify a transfer from Radcliffe to Rothschild Trust; BLMIS transferred the cash directly to Rothschild Trust. Accordingly, any subsequent transfer claim is dismissed. Since the *ET Decision* did not address the question of extraterritoriality in connection with initial transfers or the entities for whose benefit the initial transfers were made, this disposition does not affect those claims.

iv. *Picard v. UBS AG*, Adv. Pro. 10-05311

According to the Chart, Luxembourg Investment Fund U.S. Equity Plus ("Luxembourg Fund") made subsequent transfers to UBS AG, UBS (Luxembourg) S.A. ("UBS Lux") and UBS Fund Services (Luxembourg) SA ("UBS Fund Services").[41] The Luxembourg Fund is a sub-fund of Luxembourg Investment Fund, a Luxembourg corporation, and both are in liquidation in Luxembourg. (*Amended Complaint*, dated June 26, 2015 ("*UBS Proffered AC*") at ¶¶ 41-42 (ECF Adv. P. No. 10-05311 Doc. # 221).) The Chart does not indicate that the Luxembourg Fund conducted its principal operations in New York (Factor 1), and I infer that it is a foreign entity that did not reside in the United States.

As to the Subsequent Transferees, the Chart does not indicate that either UBS Lux or UBS Fund Services used an office in connection with the transaction (Factor 19), and the *UBS Proffered AC* alleges that both were formed under Luxembourg law and maintained their registered offices there. (*UBS Proffered AC* at ¶¶ 49-50.) The Chart indicates that UBS AG used a U.S. office in connection with the transaction, and the

[41] The Trustee also alleged a subsequent transfer claim against UBS Third Party Management Company SA, but that claim has been dismissed for the reason noted earlier.

UBS Proffered AC alleges that UBS AG is a Swiss public company with its principal offices in Basel, Switzerland. In addition, it also maintains offices at 299 Park Avenue, New York, NY 10171 and 101 Park Avenue, New York, NY 10178 and it conducts daily business activities in Stamford, Connecticut and other locations in the United States. (*Id.* at ¶ 48.) Accordingly, UBS AG resides in the United States, but UBS Lux and UBS Fund Services are foreign transferees without any domestic connection.

Although the Chart indicates that the UBS defendants received the transfers from the Luxembourg Fund, the *UBS Proffered AC* includes slightly different allegations. It avers that UBS Lux received approximately $5.5 million in fees from the Luxembourg Fund, (*id.* at ¶ 303(a)), UBS Fund Services received at least $748,000 from the Luxembourg Fund, (*id.* at ¶ 303(b)), and UBS AG received at least $1.7 million from UBS Lux and UBS Fund Services which was comprised, in part, of amounts they had received from the Luxembourg Fund. (*Id.* at ¶ 303(d).) In other words, UBS AG was an immediate transferee of UBS Lux and UBS Fund Services. It further alleges that UBS Fund Services received the Luxembourg Fund's redemption payments from BLMIS at UBS Fund Services' account at UBS AG's Stamford, Connecticut branch which then went to the Luxembourg Fund's bank account at UBS SA, (*id.* at ¶ 274), but these allegations relate to the initial transfers from BLMIS to the Luxembourg Fund, and not the subsequent transfers.

In fact, the Court is unable to locate any allegations within the four corners of the ninety-seven page *UBS Proffered AC* that identify the location of the subsequent transfers and the *UBS Proffered AC* does not imply that they occurred in the United States. Moreover, if the subsequent transfers to UBS Lux and UBS Fund Services

cannot be recovered on grounds of extraterritoriality, the subsequent transfers from those entities to UBS AG are also beyond the reach of Bankruptcy Code § 550(a)(2). Accordingly, the Trustee has failed to rebut the presumption against extraterritoriality, and these subsequent transfer claims are dismissed.

v. *Picard v. Natixis*, Adv. Pro. No. 10-05353

The Trustee alleges that Bloom Asset Holdings Fund ("Bloom") received subsequent transfers in the sum of $191 million from Groupement and $18 million from Alpha Prime Fund Limited ("Alpha Prime").[42] (*Trustee's Proffered Allegations Pertaining to the Extraterritoriality Issue as to Natixis S.A., Bloom Asset Holdings Fund, and Tensyr Limited*, dated June 26, 2015 ("*Natixis Proffer*"), at ¶ 68 (ECF Adv. P. No. 10-05353 Doc. # 102).) As noted earlier, the Trustee did not take the position that Groupement or Alpha Prime maintained their principal operations in the United States, but the Trustee now contends that they did. In fact, Groupement, Alpha Prime and Bloom are all foreign entities, and the *Natixis Proffer* does not allege that they maintained offices or resided in the United States.

Instead, the Trustee attempts to tie Bloom to the United States through allegations relating to Natixis FP, a domestic corporation. According to the *Natixis Proffer*, Bloom is an indirect subsidiary of Natixis, S.A., a corporate and investment bank created in November 2006 under the laws of France, (*id.* at ¶ 5), and Natixis is the parent of "an international network of financial institutions, service providers, and banks that maintained operations and offices in the United States through numerous

[42] The Trustee also alleges claims in this adversary proceeding relating to subsequent transfers by Fairfield Sentry and Harley that have already been dismissed on comity grounds.

subsidiary entities, including Defendants Natixis FP and Bloom. (*Id.*) Bloom's "corporate function was to act as a non-U.S. taxpayer on behalf of Natixis FP to invest in BLMIS Feeder Funds and other hedge funds that did not permit direct investments by U.S. taxpayers like Natixis FP." (*Id.* at ¶ 14; *accord id* at ¶ 15.) Two affiliates of Natixis, including Natixis FP, operated from the "same principal place of business in New York," (*id.* at ¶ 11), and controlled and directed the transactions on behalf of Bloom with the Subsequent Transferor-feeder funds. (*Id.* at ¶¶ 13-24.) The substance of these allegations is that Natixis F.P., a New York entity, ran Bloom for its own benefit, and utilized Bloom letterhead that listed Bloom's address as 9 West 57th Street in Manhattan. (*Id.* at ¶ 79.)

The underlying Complaint does not identify the subsequent transfers to Bloom or any of the other subsequent transferees. (*See Picard v. Natixis*, *Complaint*, dated Dec. 8, 2008, at ¶¶ 223-36 (ECF Doc. # 1).) The *Natixis Proffer* refers to only one subsequent transfer to Bloom. Access International Advisors, LLC ("Access"), Groupement's manager, (*Natixis Proffer* at ¶ 44), wired Bloom more than $150 million in Groupement redemption proceeds through a New York correspondent account at State Street Bank & Trust Co., N.A. (*Id.* at ¶ 80.) The proffer does not identify the location of the transferor account, and since the transferee account is a correspondent account, it does not allege a domestic transfer.[43] Furthermore, Groupement does not reside in the United States.

[43] In contrast, the *Natixis Proffer* alleges that Natixis requested that Fairfield Sentry send redemptions to a Deutsche Bank account in New York, (*Natixis Proffer* at ¶ 114), and Harley paid its redemptions to a New York-based Northern Trust bank account. (*Id.* at ¶ 187.)

Accordingly, the Trustee has failed to rebut the presumption against extraterritoriality, and the subsequent transfer claims against Bloom are dismissed.

The parties are directed to confer for the purpose of submitting consensual orders consistent with the dispositions of the motions in each adversary proceeding. If they cannot submit consensual orders, they should settle orders on notice to the other parties in those adversary proceedings.

Dated: New York, New York
November 21, 2016

/s/ *Stuart M. Bernstein*
STUART M. BERNSTEIN
United States Bankruptcy Judge

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EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff, -v- BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	12-mc-115 (JSR) OPINION AND ORDER
In re: MADOFF SECURITIES	
PERTAINS TO: Consolidated proceedings on extraterritoriality issues	

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

The question here presented is whether section 550(a)(2) of the Bankruptcy Code applies extraterritorially in the context of this proceeding. Specifically, Irving H. Picard (the "Trustee"), the trustee appointed under the Securities Investor Protection Act ("SIPA"), 15 U.S.C. §§ 78aaa-78*lll*, to administer the estate of Bernard L. Madoff Investment Securities LLC ("Madoff Securities"), here seeks to recover funds that, having been transferred from Madoff Securities to certain foreign customers, were then in turn transferred to certain foreign persons and entities that comprise the defendants here at issue. These defendants seek to dismiss the Trustee's claims against them, arguing that 11 U.S.C. § 550(a)(2),

the Bankruptcy Code provision allowing for such recovery, does not apply extraterritorially. The Court assumes familiarity with the underlying facts of the Madoff Securities fraud and ensuing bankruptcy and recounts here only those facts that are relevant to the instant issues.

Central to the question here presented is the role of the so-called "feeder funds," foreign investment funds that pooled their own customers' assets for investment with Madoff Securities. As customers of Madoff Securities, the feeder funds at times withdrew monies from Madoff Securities, which they subsequently transferred to their customers, managers, and the like. When Madoff Securities collapsed in late 2008, many of these funds — which had invested all or nearly all of their assets in Madoff Securities — likewise entered into liquidation in their respective home countries. The Trustee seeks to recover not only the allegedly avoidable transfers made to the feeder funds but also subsequent transfers of alleged Madoff Securities customer property made by those funds to their immediate and mediate transferees. It is the recovery of those subsequent transfers — transfers made abroad between a foreign transferor and a foreign transferee — that is the subject of the instant consolidated proceeding.

For example, in October 2011, the Trustee filed an adversary proceeding against CACEIS Bank Luxembourg and CACEIS Bank (together, "CACEIS"), seeking $50 million in subsequent transfers of alleged Madoff Securities customer property. See Decl. of Jaclyn M.

Metzinger dated Mar. 23, 2013, Ex. A ("CACEIS Compl.") ¶ 2, No. 12 Civ. 2434, ECF No. 2 (S.D.N.Y. filed Apr. 2, 2012). CACEIS Bank Luxembourg is a Luxembourg société anonyme operating there, while CACEIS Bank is a French société anonyme operating in France. Id. ¶¶ 22-23. Both entities serve as custodian banks and engage in asset management for "corporate and institutional clients." Id. ¶¶ 3, 22-23.

The Trustee seeks to recover alleged Madoff Securities customer funds received by CACEIS. However, CACEIS did not invest directly with Madoff Securities; instead, it invested funds with Fairfield Sentry Limited and Harley International (Cayman) Limited, two Madoff Securities feeder funds that in turn invested CACEIS's assets in Madoff Securities. Id. ¶ 2. Fairfield Sentry is a British Virgin Islands ("BVI") company that had invested more than 95% of its assets in Madoff Securities. Id. It is currently in liquidation in the BVI and has settled the Trustee's avoidance and recovery action against it for a fraction of the Trustee's initial claim. See id. ¶¶ 24, 43. Harley is a Cayman Islands company that was also one of Madoff Securities' largest feeder funds, and it is now in liquidation in the Cayman Islands. Id. ¶ 25. The Trustee obtained a default judgment against Harley for more than $1 billion in November 2010. Id. ¶ 53. The Trustee alleges that CACEIS received $50 million in recoverable subsequent transfers as a customer of Fairfield Sentry and Harley, and he asserts a right to reclaim those transfers under 11 U.S.C. § 550(a)(2). See id. ¶¶ 60-69.

CACEIS and the other consolidated defendants have moved to dismiss the Trustee's complaints in their respective adversary proceedings, arguing that section 550(a)(2) of the Bankruptcy Code does not apply extraterritorially and therefore does not reach subsequent transfers made abroad by one foreign entity to another. These defendants previously moved to withdraw the reference to the Bankruptcy Court, and the Court granted that motion on a consolidated basis with respect to the following issue: "whether SIPA and/or the Bankruptcy Code as incorporated by SIPA apply extraterritorially, permitting the Trustee to avoid the initial Transfers that were received abroad or to recover from initial, immediate, or mediate foreign transferees." See Order at 3, No. 12 Misc. 115, ECF No. 167 (S.D.N.Y. June 7, 2012). The Court received briefing on this issue from the defendants, the Trustee, and the Securities Investor Protection Corporation ("SIPC") and heard oral argument on September 21, 2012. The Court concludes that (1) the application of section 550(a)(2) here would constitute an extraterritorial application of the statute, and (2) Congress did not clearly intend such an application. Moreover, given the factual circumstances at issue in these cases, even if section 550(a)(2) could be applied extraterritorially, such an application would be precluded here by considerations of international comity. This Opinion and Order addresses these issues in turn and directs further proceedings upon return to the Bankruptcy Court.

"It is a 'longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.'" Morrison v. Nat'l Australia Bank Ltd., 130 S. Ct. 2869, 2877 (2010) (quoting EEOC v. Arabian American Oil Co. ("Aramco"), 499 U.S. 244, 248 (1991)). This presumption against extraterritorial application of federal statutes "serves to protect against unintended clashes between our laws and those of other nations which could result in international discord." Aramco, 499 U.S. at 248.

In determining whether the presumption against extraterritoriality applies, the Court must determine, first, whether the factual circumstances at issue require an extraterritorial application of the relevant statutory provision; and second, if so, whether Congress intended for the statute to apply extraterritorially. See, e.g., Morrison, 130 S. Ct. at 2877-88 (engaging in this analysis with respect to section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b)); In re Maxwell Commc'n Corp. ("Maxwell I"), 186 B.R. 807, 816 (S.D.N.Y. 1995) (setting out this two-step inquiry in analyzing section 547 of the Bankruptcy Code).

The Court turns first to the question of whether the Trustee's use of section 550(a) here is in fact an extraterritorial application of the statute. In Morrison, when determining whether an underlying U.S.-based deception was sufficient to make application of section 10(b) of the Exchange Act domestic, rather than

extraterritorial, the Supreme Court looked to "the 'focus' of congressional concern," or, in other words, the "transactions that the statutes seeks to 'regulate.'" 130 S. Ct. at 2884.

The Trustee and SIPC argue that the "focus" of congressional concern in a SIPA liquidation is the regulation of the SIPC-member U.S. broker-dealer, so that the application of any of the incorporated provisions of the Bankruptcy Code is inherently domestic. But this argument proves too much. It cannot be that any connection to a domestic debtor, no matter how remote, automatically transforms every use of the various provisions of the Bankruptcy Code in a SIPA bankruptcy into purely domestic applications of those provisions. On the level of policy, this approach could raise serious issues of international comity, as discussed below. And, as a matter of precedent, Morrison suggests that such a sweeping approach fails to engage in the necessary analysis of the way in which the statutes are utilized, as "it is a rare case of prohibited extraterritorial application that lacks all contact with the territory of the United States." 130 S. Ct. at 2884. Accordingly, a mere connection to a U.S. debtor, be it tangential or remote, is insufficient on its own to make every application of the Bankruptcy Code domestic. Cf. Norex Petroleum Ltd. v. Access Indus., Inc., 631 F.3d 29, 33 (2d Cir. 2010) (per curiam) (stating, in the context of a RICO claim, that "simply alleging that some domestic conduct occurred cannot support a claim of domestic application").

The Court therefore looks to the regulatory focus of the Bankruptcy Code's avoidance and recovery provisions specifically. On a straightforward reading of section 550(a), this recovery statute focuses on "the property transferred" and the fact of its transfer, not the debtor. See 11 U.S.C. § 550(a) (allowing a trustee to recover "the property transferred . . . to the extent that a transfer is avoided" under one of the Bankruptcy Code's avoidance provisions). Moreover, section 548, the avoidance provision that is primarily at issue in these proceedings, similarly focuses on the nature of the transaction in which property is transferred, not merely the debtor itself. See, e.g., 11 U.S.C. § 548(c) (allowing a transferee who "takes for value and in good faith . . . [to] retain any interest transferred . . . to the extent that such transferee . . . gave value to the debtor in exchange for such transfer"); cf. In re Maxwell Commc'n Corp. ("Maxwell II"), 93 F.3d 1036, 1051 (2d Cir. 1996) (noting that "scrutiny of the transfer is at the heart of" an avoidance action). Accordingly, under Morrison, the transaction being regulated by section 550(a)(2) is the transfer of property to a subsequent transferee, not the relationship of that property to a perhaps-distant debtor.

To determine whether the transfers at issue in this consolidated proceeding occurred extraterritorially, "the court considers the location of the transfers as well as the component events of those transactions." Maxwell I, 186 B.R. at 817. Here, the relevant transfers and transferees are predominantly foreign:

foreign feeder funds transferring assets abroad to their foreign customers and other foreign transferees. See, e.g., CACEIS Compl. ¶ 2. This scenario is similar to circumstances found to implicate extraterritorial applications of the Bankruptcy Code's avoidance provisions in other cases. See, e.g., Maxwell I, 186 B.R. at 815 ("the antecedent debts were incurred overseas, the transfers on account of those debts were made overseas, and the recipients . . . [are] all foreigners"); In re Midland Euro Exch. Inc., 347 B.R. 708, 717 (Bankr. C.D. Cal. 2006) (noting that the parties agreed that the trustee's "claims would result in extraterritorial application of [11 U.S.C.] § 548" where "[t]he transferor was a Barbados corporation, the transferee was an English corporation, the funds originated from a bank account in London and, although transferred through a bank account in New York, eventually ended up in another bank account in England"). Although the chain of transfers originated with Madoff Securities in New York, that fact is insufficient to make the recovery of these otherwise thoroughly foreign subsequent transfers into a domestic application of section 550(a).[1] See Maxwell I, 186 B.R. at 816-17 (rejecting the claim that

[1] Nor is the fact that some of the defendants here allegedly used correspondent banks in the United States to process dollar-denominated transfers sufficient to make these foreign transfers domestic. See, e.g., Cedeno v. Intech Grp., Inc., 733 F. Supp. 2d 471, 472 (S.D.N.Y. 2010) (dismissing a RICO claim as impermissibly extraterritorial where "[t]he scheme's contacts with the United States, however, were limited to the movement of funds into and out of U.S.-based bank accounts").

the alleged preferential transfers were domestic because the funds for the transfers derived from the sale of U.S. assets); cf. Morrison, 130 S. Ct. at 2886 (rejecting the notion that the section 10(b) claim at issue was domestic because a significant portion of the fraudulent conduct occurred in the United States). Accordingly, the Court concludes that the subsequent transfers that the Trustee seeks to recover here are foreign transfers and thus would require an extraterritorial application of section 550(a).

The Court therefore turns to the second prong of the extraterritoriality inquiry: whether such an extraterritorial application was intended by Congress. The Supreme Court has explained that "'unless there is the affirmative intention of the Congress clearly expressed' to give a statute extraterritorial effect, 'we must presume it is primarily concerned with domestic conditions.'" Morrison, 130 S. Ct. at 2877 (quoting Aramco, 499 U.S. at 248). "When a statute gives no clear indication of an extraterritorial application, it has none." Id. In deciding whether Congress has "clearly expressed" such an intent, the Court looks first to the language of section 550(a), which reads:

> Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—
>
> > (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or
> > (2) any immediate or mediate transferee of such initial transferee.

11 U.S.C. § 550(a).

Nothing in this language suggests that Congress intended for this section to apply to foreign transfers, and the Trustee does not argue otherwise. Cf. Maxwell I, 186 B.R. at 819 ("[N]othing in the language or legislative history of [11 U.S.C.] § 547 expresses Congress' intent to apply the statute to foreign transfers."); Midland, 347 B.R. at 717 ("Nothing in the text of [11 U.S.C.] § 548 indicates congressional intent to apply it extraterritorially."). The Court therefore looks to "context," Morrison, 130 S. Ct. at 2883, including surrounding provisions of the Bankruptcy Code, to determine whether Congress nevertheless intended that section 550(a) apply extraterritorially.

Attempting to rebut the presumption against extraterritoriality, the Trustee focuses on section 541 of the Bankruptcy Code, which defines "property of the estate" to include certain specified property "wherever located and by whomever held." 11 U.S.C. § 541(a). It is uncontested here that the phrase "wherever located" is intended to give the Trustee title over all of the debtor's property, regardless of whether it is physically present in the United States. See H.R. Rep. No. 82-2320, at 10, reprinted in 1952 U.S.C.C.A.N. 1960, at 1976. According to the Trustee, section 541 is incorporated into the avoidance and recovery provisions of the Bankruptcy Code, which use the phrase "an interest of the debtor in property" to define the transfers that may be avoided, a phrase

that is repeated in section 541 in defining "property of the estate." See, e.g., 11 U.S.C. § 548(a) (allowing a trustee to "avoid any transfer . . . of an interest of the debtor in property"); see also Begier v. I.R.S., 496 U.S. 53, 58-59 (1990) (looking to section 541's definition of "property of the estate" in defining "property of the debtor" under section 547). Under the Trustee's theory, section 541's reference to "wherever located and by whomever held" is thereby indirectly incorporated into the Bankruptcy Code's avoidance and recovery provisions, indicating that Congress intended that those provisions apply extraterritorially as well.

Though clever, the theory is neither logical nor persuasive. That section 541's definition of "property of the estate" may be relevant to interpreting "property of the debtor" does not necessarily imply that transferred property is to be treated as "property of the estate" under section 541 prior to recovery by the Trustee. As the Court of Appeals for the Second Circuit has explained,

> In accordance with 11 U.S.C. § 541(a)(1) (1988), the property of a bankruptcy estate includes (with exceptions not presently pertinent) "all legal or equitable interests of the debtor in property as of the commencement of the case;" and pursuant to 11 U.S.C. § 541(a)(3) (1988), the property of a bankruptcy estate also includes "[a]ny interest in property that the trustee recovers" under specified Bankruptcy Code provisions, including 11 U.S.C. § 550 (1988). . . . "If property that has been fraudulently transferred is included in the § 541(a)(1) definition of property of the estate, then § 541(a)(3) is rendered meaningless with respect to property recovered pursuant to fraudulent transfer actions." Further, "the inclusion of property recovered by the trustee pursuant to his avoidance powers in a separate definitional

> subparagraph clearly reflects the congressional intent that such property is not to be considered property of the estate until it is recovered."

In re Colonial Realty Co., 980 F.2d 125, 131 (2d Cir. 1992) (citation omitted) (quoting In re Saunders, 101 B.R. 303, 305 (Bankr. N.D. Fla. 1989)).

Under the logic of Colonial Realty, whether "property of the estate" includes property "wherever located" is irrelevant to the instant inquiry: fraudulently transferred property becomes property of the estate only after it has been recovered by the Trustee, so section 541 cannot supply any extraterritorial authority that the avoidance and recovery provisions lack on their own. See Maxwell I, 186 B.R. at 820 ("Because preferential transfers do not become property of the estate until recovered, § 541 does not indicate the Congress intended § 547 to govern extraterritorial transfers." (citing Colonial Realty, 980 F.2d at 131)); Midland, 347 B.R. at 718 (finding that "neither the plain language of the statute nor its reading in conjunction with other parts of the Code establish[es] congressional intent to apply § 548 extraterritorially," in part because "allegedly fraudulent transfers do not become property of the estate until they are avoided").[2]

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[2] The Trustee asks the Court to adopt the Fourth Circuit's decision in In re French, 440 F.3d 145, 152 (4th Cir. 2006), which holds that the presumption against extraterritoriality does not apply to avoidance and recovery actions. However, the logic of French is inconsistent with the Second Circuit's decision in Colonial Realty, as French relies on a notion that the foreign property "would have been property of the debtor's estate" absent a fraudulent transfer, id., whereas Colonial Realty implies that section 541 would not

Indeed, the fact that section 541, by virtue of its "wherever located" language, applies extraterritorially may cut against the Trustee's argument. In Morrison, the Supreme Court similarly contrasted section 10(b) with another provision of the Exchange Act, noting that the other section "contains what [section] 10(b) lacks: a clear statement of extraterritorial effect. . . . [W]hen a statute provides for some extraterritorial application, the presumption against extraterritoriality operates to limit that provision to its terms." 130 S. Ct. at 2883; see also Norex, 631 F.3d at 33 ("Morrison . . . forecloses Norex's argument that because a number of RICO's predicate acts possess an extraterritorial reach, RICO itself possesses an extraterritorial reach.").

Nor does section 78fff-2(c)(3) of SIPA, which empowers a SIPA trustee to utilize the Bankruptcy Code's avoidance and recovery provisions to reclaim customer property, overcome the presumption against extraterritorial application. As with section 550(a) of the Bankruptcy Code, section 78fff-2(c)(3) of SIPA does not expressly provide for extraterritorial application; rather, it primarily incorporates the avoidance and recovery provisions of the Bankruptcy Code, suggesting that whatever limitations apply to an ordinary

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apply until after property has been recovered. In any event, French is also factually distinguishable, as "[m]ost of the activity surrounding [the relevant] transfer took place in the United States . . . [and] almost all of the parties with an interest in this litigation — the debtor, the transferees, and all but one of the creditors — are based in the United States, and have been for years." Id. at 154. Accordingly, the Court declines to adopt either French's reasoning or its ultimate determination.

bankruptcy likewise limit a SIPA liquidation. See 15 U.S.C. § 78fff-2(c)(3) (empowering a SIPA trustee to "recover any property transferred by the debtor which, except for such transfer, would have been customer property if and to the extent that such transfer is voidable or void under the provisions of Title 11"). As a more general matter, SIPA's predominantly domestic focus suggests a lack of intent by Congress to extend its reach extraterritorially. Cf. Morrison, 130 S. Ct. at 2878 (finding that the Exchange Act's focus is the purchase and sale of securities in the United States). For example, SIPA expressly excludes from SIPC membership brokers whose primary business is conducted outside of the United States, see 15 U.S.C. § 78ccc(a)(2)(A)(i), and likewise excludes as a "customer" any person whose claim arises out of transactions with a foreign subsidiary of a SIPC member, see 15 U.S.C. § 78*lll*(2)(C)(i). Furthermore, although the Trustee points to SIPA section 78eee(b)(2)(A)(i), which provides for "exclusive jurisdiction of such debtor and its property wherever located (including property located outside the territorial limits of such court . . .)," the effect of this provision is no different from that of section 841 of the Bankruptcy Code. See 15 U.S.C. § 78eee(b)(2)(A)(iii) (providing a SIPA trustee with "the jurisdiction, powers, and duties conferred upon a court of the United States having jurisdiction over cases under Title 11"). That is, although section 78eee(b)(2)(A)(i) uses the phrase "wherever located," this phrase relates only to property

of the debtor, which, as discussed above, includes transferred property only after it has been recovered by the Trustee.[3]

Finally, the Trustee contends that policy concerns require that section 550(a) of the Bankruptcy Code apply extraterritorially; that is, the Trustee argues that a contrary result would allow a U.S. debtor to fraudulently transfer all of his assets offshore and then retransfer those assets to avoid the reach of U.S. bankruptcy law. However, as other courts have found, the desire to avoid such loopholes in the law "must be balanced against the presumption against extraterritoriality, which serves to protect against unintended clashes between our laws and those of other nations which could result in international discord." Midland, 347 B.R. at 718. Assuming that any such intentional fraud occurred, the Trustee here may be able to utilize the laws of the countries where such transfers occurred to avoid such an evasion while at the same time avoiding international discord. Furthermore, although the Trustee argues that finding no extraterritorial application would undermine the primary policy objective of SIPA — the equitable distribution of customer funds to customers of the debtor — the Trustee has long insisted that indirect customers of Madoff Securities, like many of

[3] To the extent that the district court in In re Bevill, Bresler & Schulman, Inc., 83 B.R. 880 (D.N.J. 1988), found that SIPA applies extraterritorially, that case relied on an analysis that is outdated in light of the Supreme Court's decision in Morrison. See, e.g., id. at 896 (stating that "[e]xtraterritorial application of SIPA is also consistent with the extraterritorial application of other federal securities laws," including section 10(b)).

the defendants here, are not themselves creditors of the customer-property estate. See In re Bernard L. Madoff Inv. Sec. LLC, 708 F.3d 422, 427 (2d Cir. 2013) (adopting this position). Therefore, the Trustee's claim that the defendants here are being treated somehow more favorably than customer-beneficiaries of the SIPA estate — who are not similarly situated to these non-beneficiaries — is disingenuous, especially since the defendants here stand to benefit little, if at all, from the customer-property estate through their now-defunct feeder funds. In sum, the Court concludes that the presumption against extraterritorial application of federal statutes has not been rebutted here; the Trustee therefore may not use section 550(a) to pursue recovery of purely foreign subsequent transfers.

While the foregoing is dispositive, the Court further concludes, in the alternative, that even if the presumption against extraterritoriality were rebutted, the Trustee's use of section 550(a) to reach these foreign transfers would be precluded by concerns of international comity. Comity "is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws." Maxwell II, 93 F.3d at 1046 (quoting Hilton v. Guyot, 159 U.S. 113, 163-64 (1895)); see also id. at 1047 (noting that "international comity is a separate notion from the 'presumption

against extraterritoriality,' and may "preclude the application" of an otherwise extraterritorial statute). Courts conducting a comity analysis must engage in a choice-of-law analysis to determine whether the application of U.S. law would be reasonable under the circumstances, comparing the interests of the United States and the relevant foreign state. See id. at 1047-48.

The Second Circuit has previously stated that "[c]omity is especially important in the context of the Bankruptcy Code." Id. at 1048. The facts underlying the instant proceeding illustrate why this is so. As is the case with Fairfield Sentry and Harley, many of the feeder funds are currently involved in their own liquidation proceedings in their home countries. These foreign jurisdictions have their own rules concerning on what bases the recipient of a transfer from a debtor should be required to disgorge it. See, e.g., In re Fairfield Sentry Ltd. Litig., 458 B.R. 665, 672 (S.D.N.Y. 2011) (noting that the foreign representative of Fairfield Sentry's estate had filed against its investors "statutory claims under BVI law for 'unfair preferences' and 'undervalue transactions'"). Indeed, the BVI courts have already determined that Fairfield Sentry could not reclaim transfers made to its customers under certain common-law theories — a determination in conflict with what the Trustee seeks to accomplish here. See Decl. of Marco E. Schnabl dated July 13, 2012, Ex. C., No. 12 Misc. 115, ECF No. 236 (S.D.N.Y. filed July 13, 2012).

The Trustee is seeking to use SIPA to reach around such foreign liquidations in order to make claims to assets on behalf of the SIPA customer-property estate — a specialized estate created solely by a U.S. statute, with which the defendants here have no direct relationship. Without any agreement to the contrary (which the Trustee does not suggest exists), investors in these foreign funds had no reason to expect that U.S. law would apply to their relationships with the feeder funds. Cf. Maxwell II, 93 F.3d at 1051 (finding that, for purposes of the comity analysis, "England has a much closer connection to these disputes than does the United States" where the transfer occurred in England and "English law applied to the resolution of disputes arising under" the credit agreements under which the relevant transfers were made). Given the indirect relationship between Madoff Securities and the transfers at issue here, these foreign jurisdictions have a greater interest in applying their own laws than does the United States. Accordingly, as the Second Circuit found in Maxwell II, "the interests of the affected forums and the mutual interest of all nations in smoothly functioning international law counsel against the application of United States law in the present case." Id. at 1053.

In sum, the Court finds that section 550(a) does not apply extraterritorially to allow for the recovery of subsequent transfers received abroad by a foreign transferee from a foreign transferor. Therefore, the Trustee's recovery claims are dismissed to the extent

that they seek to recover purely foreign transfers.[4] Except to the extent provided in other orders, the Court directs that the following adversary proceedings be returned to the Bankruptcy Court for further proceedings consistent with this Opinion and Order: (1) those cases listed in Exhibit A of item number 167 on the docket of 12-mc-115; and (2) those cases listed in the schedule attached to item number 468 on the docket of 12-mc-115 that were designated as having been added to the "extraterritoriality" consolidated briefing.

SO ORDERED.

Dated: New York, NY
July 6, 2014

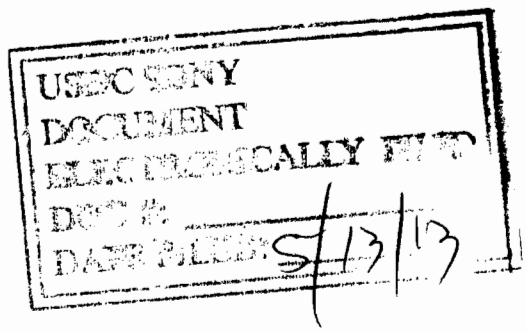
JED S. RAKOFF, U.S.D.J.

[4] The Trustee argues that dismissal at this stage is inappropriate because additional fact-gathering is necessary to determine where the transfers took place. However, it is the Trustee's obligation to allege "facts giving rise to the plausible inference that" the transfer occurred "within the United States." Absolute Activist Value Master Fund Ltd. v. Ficeto, 677 F.3d 60, 69 (2d Cir. 2012). Here, to the extent that the Trustee's complaints allege that both the transferor and the transferee reside outside of the United States, there is no plausible inference that the transfer occurred domestically. Therefore, unless the Trustee can put forth specific facts suggesting a domestic transfer, his recovery actions seeking foreign transfers should be dismissed.

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION,	
Plaintiff,	
-v-	12 MC 115 (JSR)
BERNARD L. MADOFF INVESTMENT SECURITIES LLC,	ORDER
Defendant.	
In re:	
MADOFF SECURITIES	
PERTAINS TO:	
ALL CASES	



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

In 2012, the Court consolidated proceedings regarding various issues on which the Court withdrew the reference to the Bankruptcy Court in avoidance and recovery actions brought by Irving H. Picard (the "Trustee"), appointed as trustee pursuant to the Securities Investor Protection Act ("SIPA") for the consolidated liquidation of Bernard L. Madoff Investment Securities, LLC ("Madoff Securities"). See, e.g., Order Regarding 11 U.S.C. § 550(a), No. 12 MC 115, ECF No. 314 (S.D.N.Y. Aug. 22, 2012); Order Regarding the "Good Faith" Standard, No. 12 MC 115, ECF No. 197 (S.D.N.Y. June 25, 2012); Order Regarding Extraterritoriality Issues, No. 12 MC 115, ECF No. 167 (S.D.N.Y. June 7, 2012); Order Regarding 11 U.S.C. § 502(d), No. 12 MC 115, ECF No. 155 (S.D.N.Y. June 1, 2012); Order Regarding

Standing and SLUSA Issues, No. 12 MC 115, ECF No. 114 (S.D.N.Y. May 18, 2012); Order Regarding 11 U.S.C. § 546(e), No. 12 MC 115, ECF No. 119 (S.D.N.Y. May 16, 2012); Order Regarding Antecedent Debt Issues, No. 12 MC 115, ECF No. 107 (S.D.N.Y. May 16, 2012); Order Regarding Stern v. Marshall, No. 12 MC 115, ECF No. 4 (S.D.N.Y. April 13, 2012).

Filed with each of these consolidation orders was a schedule of cases included within that consolidated proceeding. However, at the time the Orders were issued, some cases had not yet been assigned case numbers, and thus those cases were listed only by name in the appended schedule. Additionally, since the filing of those Orders, the Trustee has initiated new adversary proceedings, and the Court has issued various orders, on the consent of the parties, adding these individual cases to one or more of the consolidated proceedings.

On May 6, 2013, the Trustee convened a conference call with representative counsel for defendants whose cases fit the two scenarios described above. In order to ensure that any further proceedings in the consolidated matters are docketed in each case covered by that proceeding, the Trustee submitted to the Court a new schedule of cases, appended to this Order, listing all of the cases that had previously been missing case numbers or that had been added since the original consolidation orders were issued.

Accordingly, when future the Court issues future orders in any of the consolidated proceedings, the Court hereby directs the Clerk

of the Court to docket the orders: (1) on the docket of 12 MC 115; (2) on the docket of the cases listed in the original schedule appended to the relevant consolidation order; and (3) on the docket of cases listed in the schedule appended to this Order, to the extent that a given case was added to the relevant consolidated proceeding (as reflected in the final column for each case).

SO ORDERED.

Dated: New York, NY
May 11, 2013

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

MOTIONS TO WITHDRAW ADDED TO CONSOLIDATED ISSUE BRIEFINGS PURSUANT TO CONSENT ORDERS

1.	***Picard v. Wolfson Equities*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. May 1, 2012), ECF No. 67	11-cv-09449-JSR	K&L Gates LLP Richard A. Kirby (richard.kirby@klgates.com) Robert Honeywell (robert.honeywell@klgates.com)	Added to Consolidated Briefing on: • Stern v. Marshall[1]
2.	***Picard v. ZWD Investments*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. May 1, 2012), ECF No. 67	11-cv-09450-JSR	K&L Gates LLP Richard A. Kirby (richard.kirby@klgates.com) Robert Honeywell (robert.honeywell@klgates.com)	Added to Consolidated Briefing on: • Stern v. Marshall
3.	***Picard v. Lanx BM Investments*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. May 1, 2012), ECF No. 67	11-cv-09448-JSR	K&L Gates LLP Richard A. Kirby (richard.kirby@klgates.com) Robert Honeywell (robert.honeywell@klgates.com)	Added to Consolidated Briefing on: • Stern v. Marshall
4.	***Picard v. South Ferry #2 LP*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. May 1, 2012), ECF No. 67	11-cv-09451-JSR	K&L Gates LLP Richard A. Kirby (richard.kirby@klgates.com) Robert Honeywell (robert.honeywell@klgates.com)	Added to Consolidated Briefing on: • Stern v. Marshall
5.	***Picard v. South Ferry Building Co.*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. May 1, 2012), ECF No. 67	11-cv-09447-JSR	K&L Gates LLP Richard A. Kirby (richard.kirby@klgates.com) Robert Honeywell (robert.honeywell@klgates.com)	Added to Consolidated Briefing on: • Stern v. Marshall
6.	***Picard v. United Congregations Mesora*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. May 1, 2012), ECF No. 67	11-cv-09445-JSR	K&L Gates LLP Richard A. Kirby (richard.kirby@klgates.com) Robert Honeywell (robert.honeywell@klgates.com)	Added to Consolidated Briefing on: • Stern v. Marshall
7.	***Picard v. Chesed Congregations of America***	11-cv-09446-	K&L Gates LLP	Added to Consolidated Briefing on:

[1] *See* Order, *In re Madoff Sec.*, No. 12-mc-0115 (S.D.N.Y. April 13, 2012). ECF No. 4 ("Stern v. Marshall").

	In re Madoff Secs., No. 12-MC-0115 (S.D.N.Y. May 1, 2012), ECF No. 67	JSR	Richard A. Kirby (richard.kirby@klgates.com) Robert Honeywell (robert.honeywell@klgates.com)	• Stern v. Marshall
8.	***Picard v. S. Donald Friedman, et al*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. June 18, 2012), ECF No. 189	12-cv-02343-JSR	Moses & Singer LLP Mark N. Parry (mparry@mosessinger.com)	Added to Consolidated Briefing on: • IRA Mandatory Withdrawals[2]
9.	***Picard v. Arden Asset Management, Inc., et al.*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Oct. 15, 2012), ECF No. 395	12-cv-02581-JSR	Seward & Kissel LLP M. William Munno (munno@sewkis.com) Mandy DeRoche (deroche@sewkis.com) Michael B. Weitman (weitman@sewkis.com)	Added to Consolidated Briefing on: • Section 550(a)[3]
10.	***Picard v. Plaza Investments International Limited, et al.*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. May 24, 2012), ECF No. 126	12-cv-02646-JSR	Debevoise & Plimpton LLP Joseph P. Moodhe (Jpmoodhe@debevoise.com) Shannon Rose Selden (srselden@debevoise.com)	Added to Consolidated Briefing on: • Antecedent Debt[4]
11.	***Picard v. Atlantic Security Bank*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Oct. 15, 2012), ECF No. 395	12-cv-02980-JSR	Arnold & Porter LLP Scott B. Schreiber (Scott.Schreiber@aporter.com) Andrew T. Karron (Andrew.Karron@aporter.com)	Added to Consolidated Briefing on: • Section 550(a)
12.	***Picard v. Mistral (SPC)*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. May 25, 2012), ECF No. 138	12-cv-03532-JSR	O'Melveny & Myers LLP William J. Sushon (wsushon@omm.com) Shiva Eftekhari (seftekhari@omm.com	Added to Consolidated Briefing on: • Stern v. Marshall

[2] *See* Order, *In re Madoff Sec.,* No. 12-mc-0115 (S.D.N.Y. May 15, 2012), ECF No.99 ("IRA Mandatory Withdrawals").
[3] *See* Order, *In re Madoff Sec.,* No. 12-mc-0115 (S.D.N.Y. August 22, 2012), ECF No. 314 ("Section 550(a)").
[4] *See* Order, *In re Madoff Sec.,* No. 12-mc-0115 (S.D.N.Y. May 15, 2012), ECF No. 107 ("Antecedent Debt").

13.	***Picard v. Zephyros Limited*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. May 25, 2012), ECF No. 138	12-cv-03533-JSR	O'Melveny & Myers LLP William J. Sushon (wsushon@omm.com) Shiva Eftekhari (seftekhari@omm.com	Added to Consolidated Briefing on: • Stern v. Marshall
14.	***Picard v. Standard Chartered Financial Services (Luxembourg) S.A., et al*** (Moving Parties - Standard Chartered Bank International (Americas) Ltd. Standard Chartered International (USA) Ltd.) *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Aug. 2, 2012), ECF No. 268	12-cv-04328-JSR	Sullivan & Cromwell LLP Robinson B. Lacy (lacyr@sullcrom.com) Sharon L. Nelles (nelless@sullcrom.com) Patrick B. Berarducci (berarduccip@sullcrom.com)	Added to Consolidated Briefing on: • Stern v. Marshall • Section 546(e)[5]
15.	***Picard v. Barfield Nominees Limited et al*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Oct. 15, 2012), ECF No. 395	12-cv-05278-JSR	Katten Muchin Rosenman LLP Anthony L. Paccione (anthony.paccione@kattenlaw.com) Brian M. Sabados (brian.sabados@kattenlaw.com)	Added to Consolidated Briefing on: • Stern v. Marshall • Antecedent Debt • Section 546(e) • Extraterritoriality[6] • Good Faith [7]
16.	***Picard v. BNP Paribas S.A., et al.*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Oct. 15, 2012), ECF No. 395	12-cv-05796-JSR	Cleary Gottlieb Steen & Hamilton LLP Lawrence B. Friedman (lfriedman@cgsh.com) Breon S. Peace (bpeace@cgsh.com)	Added to Consolidated Briefing on: • Stern v. Marshall • Section 546(e) • Extraterritoriality
17.	***Picard v. Six Sis AG*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Oct. 15, 2012), ECF No. 395	12-cv-05906-JSR	Chaffetz Lindsey LLP Peter R. Chaffetz (peter.chaffetz@chaffetzlindsey.com) Andreas A. Frischknecht	Added to Consolidated Briefing on: • Stern v. Marshall • Antecedent Debt • Section 546(e)

[5] *See* Order, *In re Madoff Sec.,* No. 12-mc-0115 (S.D.N.Y. May 16, 2012), ECF No. 119 ("Section 546(e)").
[6] *See* Order, *In re Madoff Sec.,* No. 12-mc-0115 (S.D.N.Y. June 7, 2012), ECF No. 167 ("Extraterritoriality").
[7] *See* Order, *In re Madoff Sec.,* No. 12-mc-0115 (S.D.N.Y. June 25, 2012), ECF No. 197 ("Good Faith").

			(andreas.frischknecht@chaffetzlindsey.com) Erin E. Valentine (erin.valentine@chaffetzlindsey.com)	• Extraterritoriality • Good Faith
18.	***Picard v. Bank Hapoalim B.M., et al.*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Oct. 15, 2012), ECF No. 395	12-cv-06187-JSR	Chadbourne & Parke LLP Scott S. Balber (sbalber@chadbourne.com) Emily Abrahams (eabrahams@chadbourne.com) Benjamin D. Bleiberg (bbleiberg@chadbourne.com)	Added to Consolidated Briefing on: • Stern v. Marshall • Antecedent Debt • Section 546(e) • Extraterritoriality • Good Faith
19.	***Picard v. Intesa Sanpaolo S.p.A., et al.*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Oct. 15, 2012), ECF No. 395	12-cv-06291-JSR	Davis Polk & Wardwell LLP Elliot Moskowitz (elliot.moskowitz@davispolk.com) Andrew Ditchfield (andrew.ditchfield@davispolk.com)	Added to Consolidated Briefing on: • Stern v. Marshall • Antecedent Debt • Section 546(e) • Extraterritoriality • Good Faith
20.	***Picard v. ABN AMRO Fund Services (Isle of Man) Nominees Limited, et al.)*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Oct. 15, 2012), ECF No. 395	12-cv-06290-JSR	Tannenbaum Helpern Syracuse & Hirschtritt LLP Ralph A. Siciliano (siciliano@thsh.com) Zev. F. Raben (raben@thsh.com)	Added to Consolidated Briefing on: • Stern v. Marshall • Antecedent Debt • Section 546(e) • Extraterritoriality • Good Faith
21.	***Picard v. Standard Chartered Financial Services (Luxembourg) S.A., et al.*** (Moving Party is Standard Chartered Financial Services (Luxembourg) S.A.) *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Oct. 15, 2012), ECF No. 395	12-cv-06292-JSR	Sullivan & Cromwell LLP Robinson B. Lacy (lacyr@sullcrom.com) Sharon L. Nelles (nelless@sullcrom.com) Patrick B. Berarducci (berarduccip@sullcrom.com)	Added to Consolidated Briefing on: • Stern v. Marshall • Section 546(e) • Extraterritoriality • Good Faith

22.	***Picard v. Intesa Sanpaolo S.p.A., et al.*** (Moving Parties - Eurizon Capital SGR S.p.A., f/k/a Nextra Alternative Investments SGR S.p.A., Eurizon Low Volatility, f/k/a Nextra Low Volatility, Eurizon Low Volatility II, f/k/a Nextra Low Volatility II, Eurizon Low Volatility PB, f/k/a Nextra Low Volatility PB, Eurizon Medium Volatility, f/k/a Nextra Medium Volatility, Eurizon Medium Volatility II, f/k/a Nextra Medium Volatility II, and Eurizon Total Return, f/k/a Nextra Total Return) *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Oct. 15, 2012), ECF No. 395	12-cv-07157	Davis Polk & Wardwell LLP Elliot Moskowitz (elliot.moskowitz@davispolk.com) Andrew Ditchfield (andrew.ditchfield@davispolk.com)	Added to Consolidated Briefing on: • Stern v. Marshall • Antecedent Debt • Section 546(e) • Extraterritoriality • Good Faith
23.	***Picard v. Citivic Nominees Ltd.*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Oct. 15, 2012), ECF No. 395	12-cv-07228-JSR	Cleary Gottlieb Steen & Hamilton LLP Carmine D. Boccuzzi, Jr. (cboccuzzi@cgsh.com) David Y. Livshiz (dlivshiz@cgsh.com)	Added to Consolidated Briefing on: • Stern v. Marshall • Section 546(e) • Extraterritoriality • Good Faith • Section 550(a)
24.	***Picard v. Caprice International Group, Inc., et al.*** (Moving Party is Citibank (Switzerland) Ltd.) *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Oct. 15, 2012), ECF No. 395	12-cv-07230-JSR	Cleary Gottlieb Steen & Hamilton LLP Carmine D. Boccuzzi, Jr. (cboccuzzi@cgsh.com) David Y. Livshiz (dlivshiz@cgsh.com)	Added to Consolidated Briefing on: • Stern v. Marshall • Section 546(e) • Extraterritoriality • Good Faith • Section 550(a)
25.	***Picard v. Banque Degroof SA/NV (a/k/a Banque Degroof Bruxelles a/k/a Bank Degroof SA/NV), et al.*** (Moving Defendants: Banque Degroof SA/NV, Banque Degroof Luxembourg S.A., Banque Degroof France SA, Degroof Gestion Institutionnelle Luxembourg S.A., Aforge Finance Holding S.A.S., Aforge Finance	12-cv-08709-JSR	Otterbourg, Steindler, Houston & Rosen, P.C. Peter Feldman (pfeldman@oshr.com)	Added to Consolidated Briefing on: • Stern v. Marshall • Antecedent Debt • Section 546(e) • Extraterritoriality • Good Faith • Section 550(a)

	S.A.S., Aforge Gestion S.A.S., and Aforge Capital Management S.A.) *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Dec. 11, 2012), ECF No. 421			
26.	***Picard v. Banque Degroof SA/NV (a/k/a Banque Degroof Bruxelles a/k/a Bank Degroof SA/NV), et al.*** (Moving Defendants: Elite-Stability Fund Sicav and Elite-Stability Fund Sicav Stablerock Compartment, as represented by their Liquidator Pierre Delandmeter, Pierre Delandmeter, as Liquidator for Elite-Stability Fund Sicav and Elite-Stability Fund Sicav Stablerock Compartment, Access International Advisors LLC, Access Management Luxembourg (f/k/a Access International Advisors (Luxembourg) SA), as represented by it Liquidator Fernand Entringer, and Fernand Entringer, as Liquidator for Access Management Luxembourg (f/k/a Access International Advisors (Luxembourg) SA) *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Feb. 4, 2013) ECF No. 434	12-cv-08709-JSR	Katten Muchin Rosenman LLP Anthony L. Paccione (anthony.paccione@kattenlaw.com)	Added to Consolidated Briefing on: • Stern v. Marshall • Antecedent Debt • Section 546(e) • Extraterritoriality • Good Faith • Section 550(a)
27.	***Picard v. Banque Cantonale Vaudoise*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Dec. 11, 2012), ECF No. 421	12-cv-08816-JSR	Flemming Zulack Williamson Zauderer LLP John F. Zulack (Jzulack@fzwz.com)	Added to Consolidated Briefing on: • Stern v. Marshall • Antecedent Debt • Section 546(e) • Extraterritoriality • Good Faith • Section 550(a)
28.	***Picard v. Societe Generale Private Banking (Suisse) S.A. (f/k/a SG Private Banking Suisse S.A.), et al.***	12-cv-08860-JSR	Flemming Zulack Williamson Zauderer LLP John F. Zulack	Added to Consolidated Briefing on: • Stern v. Marshall • Antecedent Debt

	(Moving Defendants: Societe Generale Private Banking (Suisse) S.A. (f/k/a SG Private Banking Suisse S.A.); Societe Generale Private Banking (Lugano-Svizzera) S.A. (f/k/a SG Private Banking (Lugano-Svizzera) S.A.); Socgen Nominees (UK) Limited; Lyxor Asset Management S.A., as Successor in Interest to Barep Asset Management S.A.; Societe Generale Holding de Participations S.A., as Successor in Interest to Barep Asset Management S.A.; SG AM AI Premium Fund L.P. (f/k/a SG AM Alternative Diversified U.S. L.P.); Lyxor Asset Management Inc. (f/k/a SGAM Asset Management, Inc.), as General Partner of SG AM AI Premium Fund L.P.; SG Audace Alternatif (f/k/a SGAM AI Audace Alternatif); SGAM AI Equilibrium Fund (f/k/a SGAM Alternative Multi-Manager Diversified Fund); Lyxor Premium Fund (f/k/a SGAM Alternative Diversified Premium Fund); Societe Generale S.A., as Trustee for Lyxor Premium Fund; Societe Generale Bank & Trust S.A.) *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Dec. 11, 2012), ECF No. 421		(Jzulack@fzwz.com)	• Section 546(e) • Extraterritoriality • Good Faith • Section 550(a)
29.	***Picard v. Lombard Odier Darier Hentsch & Cie*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Dec. 11, 2012), ECF No. 421	12-cv-08858-JSR	Flemming Zulack Williamson Zauderer LLP John F. Zulack (Jzulack@fzwz.com)	Added to Consolidated Briefing on: • Stern v. Marshall • Antecedent Debt • Section 546(e) • Extraterritoriality • Good Faith • Section 550(a)
30.	***Picard v. Bordier & Cie*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y.	12-cv-08861-JSR	Flemming Zulack Williamson Zauderer LLP John F. Zulack	Added to Consolidated Briefing on: • Stern v. Marshall • Antecedent Debt

	Dec. 11, 2012), ECF No. 421		(Jzulack@fzwz.com)	• Section 546(e) • Extraterritoriality • Good Faith • Section 550(a)
31.	***Picard v. ABN AMRO Fund Services*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Feb. 4, 2013) ECF No. 434	12-cv-09115-JSR	Latham & Watkins Christopher R. Harris (christopher.harris@lw.com)	Added to Consolidated Briefing on: • Stern v. Marshall • Antecedent Debt • Section 546(e) • Extraterritoriality • Good Faith • Section 550(a)
32.	***UBS Deutschland AG, et al (Moving Defendant - UBS Deutschland AG)*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Feb. 4, 2013) ECF No. 434	12-cv-09380-JSR	Gibson, Dunn & Crutcher LLP Marshall King (mking@gibsondunn.com) Gabriel Herrmann (gherrmann@gibsondunn.com)	Added to Consolidated Briefing on: • Stern v. Marshall • Section 546(e) • Extraterritoriality • Good Faith • Section 550(a)
33.	***UBS Deutschland AG, et al (Moving Defendant - LGT Bank (Switzerland) Ltd.)*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Feb. 4, 2013) ECF No. 434	12-cv-09380-JSR	Milbank, Tweed, Hadley & McCloy LLP Stacey J. Rappaport (srappaport@milbank.com) Dorothy Heyl (dheyl@milbank.com)	Added to Consolidated Briefing on: • Stern v. Marshall • Section 546(e) • Extraterritoriality • Good Faith • Section 550(a)
34.	***Picard v. Montbarry Incorporated, et al*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. Feb. 4, 2013) ECF No. 434	13-cv-00502-JSR	Simon & Partners LLP Bradley D. Simon (bsimon@simonlawyers.com) Marko & Magolnick Joel S. Magolnick (magolnick@mm-pa.com)	Added to Consolidated Briefing on: • Stern v. Marshall • Section 546(e) • Good Faith
35.	***Picard vs. LGT Bank in Liechtenstein Ltd.*** *In re Madoff Secs.,* No. 12-MC-0115 (S.D.N.Y. March 5, 2013) ECF No. 447	13-cv-01394-JSR	Milbank, Tweed, Hadley & McCloy LLP Stacey J. Rappaport (srappaport@milbank.com)	Added to Consolidated Briefing on: • Stern v. Marshall • Antecedent Debt • Section 546(e)

			Dorothy Heyl (dheyl@milbank.com)	• Extraterritoriality • Good Faith • Section 550(a)

ACTIONS IN THE EXHIBIT A TO THE CONSOLIDATED BRIEFING ORDERS (Missing District Court Docket Numbers)				
1.	***Picard v. Bell Ventures Limited, et al***	11-cv-05507	Jacobs Partners LLC Mark R. Jacobs (mark.jacobs@jacobs-partners.com) Michele Marxkors (mmarxkors@jacobs-partners.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
2.	***Picard v. Elaine Pikulik***	11-cv-08532	Rubinstein & Corozzo LLP Ronald Rubinstein (rcorozzo1@gmail.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall • Antecedent Debt
3.	***Picard v. Peter Joseph***	12-cv-00036	Golenbock Eiseman Assor Bell & Peskoe LLP David J. Eiseman (deiseman@golenbock.com) Douglas L. Furth (dfurth@golenbock.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
4.	***Picard v. Gary J. Korn, et al.***	12-cv-00037	Golenbock Eiseman Assor Bell & Peskoe LLP Jonathan L. Flaxer (jflaxer@golenbock.com) Michael S. Weinstein (mweinstein@golenbock.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
5.	***Picard v. Theodore Story, et al.***	12-cv-00039	Golenbock Eiseman Assor Bell & Peskoe LLP Jonathan L. Flaxer (jflaxer@golenbock.com) Michael S. Weinstein (mweinstein@golenbock.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
6.	***Picard v. Story Family Trust #3, et al.***	12-cv-00040	Golenbock Eiseman Assor Bell & Peskoe LLP Jonathan L. Flaxer (jflaxer@golenbock.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall

			Michael S. Weinstein (mweinstein@golenbock.com)	
7.	***Picard v. Douglas D. Johnson***	12-cv-00091	Herrick, Feinstein LLP Howard R. Elisofon (helisofon@herrick.com) Hanh V. Huynh (hhuynh@herrick.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
8.	***Picard v. Kohn, et al.*** (as filed by UniCredit Bank Austria AG)	12-cv-02161	Sullivan & Worcester LLP Franklin B. Velie (fvelie@sandw.com) Jonathan Kortmansky (jkortmansky@sandw.com) Mitchell C. Stein (mstein@sandw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
9.	***Picard v. HSBC Bank, plc, et al.*** (as filed by UniCredit Bank Austria AG)	12-cv-02162	Sullivan & Worcester LLP Franklin B. Velie (fvelie@sandw.com) Jonathan Kortmansky (jkortmansky@sandw.com) Mitchell C. Stein (mstein@sandw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
10.	***Picard v. HSBC Bank, plc, et al.*** (as filed by UniCredit S.p.A. and Pioneer Alternative Investment Management Ltd.)	12-cv-02239	Skadden, Arps, Slate, Meagher & Flom LLP Susan L. Saltzstein (susan.saltzstein@Skadden.com) Marco E. Schnabl (Marco.Schnabl@Skadden.com) Jeremy A. Berman (jeremy.berman@Skadden.com) Jason C. Putter (jason.putter@skadden.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
11.	***Picard v. Kohn, et al.*** (as filed by UniCredit S.p.A. and Pioneer Global Asset Management S.p.A.)	12-cv-02240	Skadden, Arps, Slate, Meagher & Flom LLP Susan L. Saltzstein	Missing Consolidated Briefing Orders: • Section 546(e)

			(susan.saltzstein@Skadden.com) Marco E. Schnabl (Marco.Schnabl@Skadden.com) Jeremy A. Berman (jeremy.berman@Skadden.com) Jason C. Putter (jason.putter@skadden.com)	• Stern v. Marshall
12.	***Picard v. Walter J. Gross Revocable Trust, et al.***	12-cv-02340	Moses & Singer LLP Mark N. Parry (mparry@mosessinger.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
13.	***Picard v. Shum Family Partnership III, LP, et al.***	12-cv-02342	Moses & Singer LLP Mark N. Parry (mparry@mosessinger.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
14.	***Picard v. S. Donald Friedman, et al***	12-cv-02343	Moses & Singer LLP Mark N. Parry (mparry@mosessinger.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
15.	***Picard v. Second Act Associates, L.P., et al.***	12-cv-02367	Sanders Ortoli Vaughn-Flam Rosenstadt LLP Jeremy B. Kaplan (jk@sovrlaw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
16.	***Picard v. Cohmad Securities Corporation, et al.*** (All Moving Parties and Joinders)	12-cv-02368 12-cv-02347 12-cv-02369 12-cv-02589 12-cv-02676 12-cv-02930 12-cv-03101 12-cv-03103 12-cv-03124 12-cv-03034 12-cv-03404 12-cv-03663	Katsky Korins LLP Robert A. Abrams rabrams@katskykorins.com Siegel, Lipman, Dunay, Shepard & Miskel, LLP Kenneth W. Lipman klipman@sldsmlaw.com Vinson & Elkins LLP Steven Paradise (sparadise@velaw.com) Clifford Thau	Missing Consolidated Briefing Orders: • Stern v. Marshall • Antecedent Debt

			(cthau@velaw.com) Nikolay Vydashenko (nvydashenko@velaw.com) Hoffinger Stern & Ross LLP Fran Hoffinger (fhoffinger@hsrlaw.com) Jack Hoffinger (jhoffinger@hsrlaw.com) Drohan Lee LLP Vivian R. Drohan (vdrohan@dlkny.com) Fox Rothschild Ernest E. Badway (ebadway@foxrothschild.com) Tesser & Cohen Mark A. Blount (mblount@tessercohen.com) John J. Lavin (jlavin@tessercohen.com) McLaughlin & Stern, LLP Bruce A. Langer (blanger@mclaughlinstern.com) David W. Sass (dsass@mclaughlinstern.com) Jaspan Schlesinger LLP Steven R. Schlesinger (sschlesinger@jaspanllp.com) Shannon Anne Scott (sscott@jaspanllp.com)	

			Westerman Ball Ederer Miller & Sharfstein LLP Richard Gabriele (rgabriele@westermanllp.com) Jeffrey A. Miller (jmiller@westermanllp.com)	
17.	***Picard v. Lewis W. Bernard 1995 Charitable Remainder Trust, et al.***	12-cv-02407	Golenbock Eiseman Assor Bell & Peskoe LLP Douglas L. Furth (dfurth@golenbock.com) Michael Weinstein (mweinstein@golenbock.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
18.	***Picard v. Kostin Company, et al.***	12cv-02409	Morgan, Lewis & Bockius LLP Bernard J. Garbutt III (bgarbutt@morganlewis.com) Menachem O. Zelmanovitz (mzelmanovitz@morganlewis.com) Andrew D. Gottfried (agottfried@morganlewis.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
19.	***Picard v. Estate of William E. Sorrel, et al***	12-cv-02411	Rosenfeld & Kaplan, LLP Tab K. Rosenfeld (tab@rosenfeldlaw.com) Steven Kaplan (steve@rosenfeldlaw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
20.	***Picard v. Banca Carige, S.P.A.***	12-cv-02408	Kasowitz, Benson, Torres, & Friedman LLP David J. Mark (dmark@kasowitz.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
21.	***Picard v. Banco Itau Europa Luxembourg S.A., et al***	12-cv-02432	Shearman & Sterling LLP Heather Kafele (hkafele@shearman.com) Joanna Shally (jshally@shearman.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall

22.	***Picard v. Estate of Doris M. Pearlman, et al***	12-cv-02433	K&L Gates LLP Richard A. Kirby (richard.kirby@klgates.com) Joanna M. Hepburn (Joanna.hepburn@klgates.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
23.	***Picard v. Banque Privee Espirito Santo S.A.***	12-cv-02442	Flemming Zulack Williamson Zauderer LLP Elizabeth A. O'Connor (eoconnor@fzwz.com) John F. Zulack (Jzulack@fzwz.com) Megan Davis (mdavis@fzwz.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
24.	***Picard v. Bennett M. Berman Trust, et al.*** (Jeffrey Berman and Jeffrey Berman Foundation - Moving Parties)	12-cv-02451	Goodwin Procter LLP Daniel M. Glosband (dglosband@goodwinprocter.com) Larkin M. Morton (lmorton@goodwinprocter.com) Christopher Newcomb (cnewcomb@goodwinprocter.com) Proskauer Rose LLP Richard L. Spinogatti (rspinogatti@proskauer.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
25.	***Picard v. DOS BFS Family Partnership II, L.P., et al.***	12-cv-02453	Westerman Ball Ederer Miller & Sharfstein LLP John Westerman (jwesterman@westermanllp.com) Mickee Hennessy, Esq. (mhennessy@westermanllp.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
26.	***Picard v. Credit Suisse AG, et al***	12-cv-02454	O'Melveny & Myers LLP William J. Sushon (wsushon@omm.com) Shiva Eftekhari	Missing Consolidated Briefing Orders: • Stern v. Marshall

			(seftekhari@omm.com)	
27.	***Picard v. The Sumitomo Trust and Banking Co., Ltd.***	12-cv-02481	Becker, Glynn, Melamed & Muffly LLP Zeb Landsman (zlandsman@beckerglynn.com) Jordan E. Stern (jstern@beckerglynn.com) Michelle Mufich (mmufich@beckerglynn.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
28.	***Picard v. Magnify Inc., et al.***	12-cv-02482	Kobre & Kim LLP Steven G. Kobre (steven.kobre@kobrekim.com) Danielle L. Rose (danielle.rose@kobrekim.com) David H. McGill (david.mcgill@kobrekim.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
29.	***Picard v. James Lowrey, et al.***	12-cv-02510	K&L Gates LLP Richard A. Kirby (richard.kirby@klgates.com) Laura Clinton (laura.clinton@klgates.com) Martha Rodriguez Lopez (martha.rodriguezlopez@klgates.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
30.	***Picard v. Chris Lazarides***	12-cv-02511	Gibbons P.C. Michael S. O'Reilly (moreilly@gibbonslaw.com) Christopher, Nick P. (Christopher@gibbonslaw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
31.	***Picard v. Stuart J. Rabin***	12-cv-02512	K&L Gates LLP Richard A. Kirby (richard.kirby@klgates.com) Robert Honeywell (robert.honeywell@klgates.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall

32.	***Picard v. Morris Blum Living Trust, et al***	12-cv-02513	K&L Gates LLP Richard A. Kirby (richard.kirby@klgates.com) Laura Clinton (laura.clinton@klgates.com) Martha Rodriguez Lopez (martha.rodriguezlopez@klgates.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
33.	***Picard v. Albert D. Angel, et al.***	12-cv-02522	Skoloff & Wolfe, P.C. Jonathan W. Wolfe (jwolfe@skoloffwolfe.com) Barbara A. Schweiger (bschweiger@skoloffwolfe.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
34.	***Picard v. Katz Group Limited Partnership, et al.***	12-cv-02523	Becker Meisel LLC Stacey L. Meisel (slmeisel@beckermeisel.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
35.	***Picard v. Trust 'A' U/W/G Hurwitz, et al.***	12-cv-02525	Greenberg Traurig Maria J. DiConza (diconzam@gtlaw.com) Lawrence E. Rifken (rifkenl@gtlaw.com) Thomas J. McKee, Jr. (mckeet@gtlaw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
36.	***Picard v. Allen R. Hurwitz, et al.***	12-cv-02526	Greenberg Traurig Maria J. DiConza (diconzam@gtlaw.com) Lawrence E. Rifken (rifkenl@gtlaw.com) Thomas J. McKee, Jr. (mckeet@gtlaw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
37.	***Picard v. Brandi Hurwitz, et al.***	12-cv-02527	Greenberg Traurig Maria J. DiConza (diconzam@gtlaw.com) Lawrence E. Rifken	Missing Consolidated Briefing Orders: • Stern v. Marshall

			(rifkenl@gtlaw.com) Thomas J. McKee, Jr. (mckeet@gtlaw.com)	
38.	***Picard v. The June Bonyor Revocable Trust Restated UA dtd 5/22/00, et al***	12-cv-02528	Greenberg Traurig Maria J. DiConza (diconzam@gtlaw.com) David G. Barger (bargerd@gtlaw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
39.	***Picard v. Banque J. Safra (Suisse) SA***	12-cv-02587	Sullivan & Cromwell LLP Robinson B. Lacy (lacyr@sullcrom.com) Joshua Fritsch (fritschj@sullcrom.com) Angelica M. Sinopole (sinopolea@sullcrom.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
40.	***Picard v. Vizcaya Partners Limited, et al.***	12-cv-02588	Sullivan & Cromwell LLP (for Bank J. Safra (Gibraltar) Limited) Robinson B. Lacy (lacyr@sullcrom.com) Joshua Fritsch (fritschj@sullcrom.com) Angelica M. Sinopole (sinopolea@sullcrom.com) Katten Muchin Rosenman LLP (for Zeus Partners Ltd) Anthony L. Paccione (anthony.paccione@kattenlaw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
41.	***Picard v. Delta National Bank & Trust Company***	12-cv-02615	Duane Morris LLP John Dellasportas (dellajo@duanemorris.com) William C. Heuer (wheuer@duanemorris.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall

42.	***Picard v. Abu Dhabi Investment Authority***	12-cv-02616	Quinn Emanuel Urquhart & Sullivan, LLP Peter E. Calamari (petercalamari@quinnemanuel.com) Marc L. Greenwald (marcgreenwald@quinemanuel.com) Eric M. Kay (erickay@quinnemanuel.com) David S. Mader (davidmader@quinnemanuel.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
43.	***Picard v. Weiner Investments, L.P., et al.***	12-cv-02617	Manion McDonough & Lucas, P.C. James R. Walker (jwalker@mmlpc.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
44.	***Picard v. Estate of Ella N. Waxberg, et al.*** - (Sonya Kahn and Marvin D. Waxberg - Moving Parties)	12-cv-02620	Frank, White-Boyd, PA Julianne R. Frank (jrfbnk@gmail.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
45.	***Picard v. Stefanelli Investors Group, et al*** (Bankr. Dkt No. 10-05255; Joan L. Apisa & Danielle L. D'Esposito – Moving Party)	12-cv-02621	Law Office of Scott A. Steinberg Michael Harrison (harrisonm@optonline.net)	Missing Consolidated Briefing Orders: • Stern v. Marshall
46.	***Picard v. Nine Thirty LL Investments, LLC, et al***	12-cv-02622	Wolff & Samson, PC Ronald L. Israel (risrael@wolffsamson.com) Sperling & Slater P.C. Michael G. Dickler (mdickler@sperling-law.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
47.	***Picard v. Kohn, et al.*** (as filed by the Kohn Defendants)	12-cv-02639	The Law Office of Sheldon Eisenberger Sheldon Eisenberger (sheldon@eisenbergerlaw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall

			Neuberger, Quinn, Gielen, Rubin & Gibber, PA Price O. Gielen (pog@nqgrg.com) Nathan D. Adler (nda@nqgrg.com)	
48.	***Picard v. HSBC Bank, plc, et al.*** (as filed by the Kohn Defendants)	12-cv-02640	The Law Office of Sheldon Eisenberger Sheldon Eisenberger (sheldon@eisenbergerlaw.com) Neuberger, Quinn, Gielen, Rubin & Gibber, PA Price O. Gielen (pog@nqgrg.com) Nathan D. Adler (nda@nqgrg.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
49.	***Picard v. Falcon Private Bank Ltd (f/k/a AIG Private Bank AG)***	12-cv-02645	Pillsbury Winthrop Shaw Pittman LLP Eric Fishman (eric.fishman@pillsburylaw.com) Karen Dine (karen.dine@pillsburylaw.com) Brandon Johnson (brandon.johnson@pillsburylaw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
50.	***Picard v. Peter G. Chernis Revocable Trust Dtd 1/16/87, as amended, et al.***	12-cv-02715	Duane Morris LLP Patricia Piskorski Heer (phheer@duanemorris.com) Martin B. Shulkin (MBShulkin@duanemorris.com) Paul D. Moore (PDMoore@duanemorris.com) Jeffrey D. Sternklar (JDSternklar@duanemorris.com) William Heuer (wheuer@duanemorris.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall

51.	***Picard v. Marilyn Chernis Revocable Trust, et al***	12-cv-02716	Duane Morris LLP Patricia Piskorski Heer (phheer@duanemorris.com) Martin B. Shulkin (MBShulkin@duanemorris.com) Paul D. Moore (PDMoore@duanemorris.com) Jeffrey D. Sternklar (JDSternklar@duanemorris.com) William Heuer (wheuer@duanemorris.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
52.	***Picard v. Picard v. Chernis Family Living Trust (2004)***	12-cv-02717	Duane Morris LLP Patricia Piskorski Heer (phheer@duanemorris.com) Martin B. Shulkin (MBShulkin@duanemorris.com) Paul D. Moore (PDMoore@duanemorris.com) Jeffrey D. Sternklar (JDSternklar@duanemorris.com) William Heuer (wheuer@duanemorris.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
53.	***Picard v. Robyn G. Chernis Irrevocable Trust u/d/t 7/4/93***	12-cv-02718	Duane Morris LLP Patricia Piskorski Heer (phheer@duanemorris.com) Martin B. Shulkin (MBShulkin@duanemorris.com) Paul D. Moore (PDMoore@duanemorris.com) Jeffrey D. Sternklar (JDSternklar@duanemorris.com) William Heuer (wheuer@duanemorris.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall

54.	***Picard v. Evelyn Chernis Irrevocable Trust Agreement For Samantha Eyges Dtd October 6th 1986, et al***	12-cv-02721	Duane Morris LLP Patricia Piskorski Heer (phheer@duanemorris.com) Martin B. Shulkin (MBShulkin@duanemorris.com) Paul D. Moore (PDMoore@duanemorris.com) Jeffrey D. Sternklar (JDSternklar@duanemorris.com) William Heuer (wheuer@duanemorris.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
55.	***Picard v. Residuary Trust for Phyllis Reischer under the Amended & Restated Indenture of Trust dated 8/8/01, et al***	12-cv-02723	Duane Morris LLP Patricia Piskorski Heer (phheer@duanemorris.com) Martin B. Shulkin (MBShulkin@duanemorris.com) Paul D. Moore (PDMoore@duanemorris.com) Jeffrey D. Sternklar (JDSternklar@duanemorris.com) William Heuer (wheuer@duanemorris.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
56.	***Picard v. Douglas Shapiro***	12-cv-02725	Duane Morris LLP Patricia Piskorski Heer (phheer@duanemorris.com) Martin B. Shulkin (MBShulkin@duanemorris.com) Paul D. Moore (PDMoore@duanemorris.com) Jeffrey D. Sternklar (JDSternklar@duanemorris.com) William Heuer (wheuer@duanemorris.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall

57.	***Picard v. Magnus A. Unflat, et al***	12-cv-02726	Duane Morris LLP Patricia Piskorski Heer (phheer@duanemorris.com) Martin B. Shulkin (MBShulkin@duanemorris.com) Paul D. Moore (PDMoore@duanemorris.com) Jeffrey D. Sternklar (JDSternklar@duanemorris.com) William Heuer (wheuer@duanemorris.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
58.	***Picard v. G.R.A.M. Limited Partnership, et al***	12-cv-02727	Duane Morris LLP Patricia Piskorski Heer (phheer@duanemorris.com) Martin B. Shulkin (MBShulkin@duanemorris.com) Paul D. Moore (PDMoore@duanemorris.com) Jeffrey D. Sternklar (JDSternklar@duanemorris.com) William Heuer (wheuer@duanemorris.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
59.	***Picard v. Deborah Madoff, et al.*** (Deborah Madoff – Moving Party)	12-cv-02751	Cohen & Gresser LLP Mark S. Cohen (mcohen@cohengresser.com) Daniel H. Tabak (dtabak@cohengresser.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
60.	***Picard v. Peter B. Madoff, et al.*** (Deborah Madoff and Stephanie S. Mack – Moving Parties)	12-cv-02752	Cooley LLP Alan Levine (alevine@cooley.com) Lawrence C. Gottlieb (lgottlieb@cooley.com) Laura Grossfield Birger	Missing Consolidated Briefing Orders: • Stern v. Marshall

			(lbirger@cooley.com) Michael A. Klein (mklein@cooley.com) Cohen & Gresser LLP Mark S. Cohen (mcohen@cohengresser.com) Daniel H. Tabak (dtabak@cohengresser.com)	
61.	***Picard v. JD Partners LLC, et al.***	12-cv-02755	King & Spalding LLP Arthur J. Steinberg (asteinberg@kslaw.com) Heath D. Rosenblat (hrosenblat@kslaw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
62.	***Picard vs. America Israel Cultural Foundation, Inc***	12-cv-02756	SNR Denton US LLP Carole Neville (carole.neville@snrdenton.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
63.	***Picard v. HSD Investments, L.P., et al***	12-cv-02757	King & Spalding LLP Arthur J. Steinberg (asteinberg@kslaw.com) Michael A. Bartelstone (mbartelstone@kslaw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
64.	***Picard vs. RKD Investments, L.P, et al.***	12-cv-02759	King & Spalding LLP Arthur J. Steinberg (asteinberg@kslaw.com) Michael A. Bartelstone (mbartelstone@kslaw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
65.	***Picard v. Richard M. Glantz, et al.***	12-cv-02778	Law Office of Richard E. Signorelli Richard E. Signorelli (rsignorelli@nyclitigator.com) Bryan Ha (bhanyc@gmail.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
66.	***Picard v. Macher Family Partnership, et al.***	12-cv-02779	Law Office of Richard E. Signorelli Richard E. Signorelli	Missing Consolidated Briefing Orders:

			(rsignorelli@nyclitigator.com) Bryan Ha (bhanyc@gmail.com)	• Stern v. Marshall
67.	***Picard v. Stephen H. Stern***	12-cv-02780	Law Office of Richard E. Signorelli Richard E. Signorelli (rsignorelli@nyclitigator.com) Bryan Ha (bhanyc@gmail.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
68.	***Picard v. Dahme Family Bypass Testamentary Trust Dated 10/27/76, et al***	12-cv-02781	Law Office of Richard E. Signorelli Richard E. Signorelli (rsignorelli@nyclitigator.com) Bryan Ha (bhanyc@gmail.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
69.	***Picard v. The Lustig Family 1990 Trust, et al***	12-cv-02782	Law Office of Richard E. Signorelli Richard E. Signorelli (rsignorelli@nyclitigator.com) Bryan Ha (bhanyc@gmail.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
70.	***Picard v. David Ivan Lustig***	12-cv-02783	Law Office of Richard E. Signorelli Richard E. Signorelli (rsignorelli@nyclitigator.com) Bryan Ha (bhanyc@gmail.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
71.	***Picard v. Liselotte J. Leeds Lifetime Trust***	12-cv-02784	Dow Lohnes PPLC Leslie H. Wiesenfelder (lwiesenfelder@dowlohnes.com) Brent Olson (bolson@dowlohnes.com) Michael Hays (mhays@dowlohnes.com) Daniel Prichard (dprichard@dowlohnes.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
72.	***Picard v. Michael S. Leeds, et al.***	12-cv-02785	Dow Lohnes PPLC Leslie H. Wiesenfelder (lwiesenfelder@dowlohnes.com) Brent Olson	Missing Consolidated Briefing Orders: • Stern v. Marshall

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73.	***Picard vs. The Leeds Partnership, et al.***	12-cv-02786	Dow Lohnes PPLC Leslie H. Wiesenfelder (lwiesenfelder@dowlohnes.com) Brent Olson (bolson@dowlohnes.com) Michael Hays (mhays@dowlohnes.com) Daniel Prichard (dprichard@dowlohnes.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
74.	***Picard v. The Public Institution for Social Security***	12-cv-02787	Goodwin Procter LLP Daniel M. Glosband (dglosband@goodwinprocter.com) Larkin M. Morton (lmorton@goodwinprocter.com) Christopher Newcomb (cnewcomb@goodwinprocter.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
75.	***Picard v. MAF Associates, LLC, et al.***	12-cv-02788	King & Spalding LLP Arthur J. Steinberg (asteinberg@kslaw.com) Heath D. Rosenblat (hrosenblat@kslaw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
76.	***Picard v. Lisa Liebmann Adams***	12-cv-02789	Day Pitney LLP Helen Harris (hharris@daypitney.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
77.	***Picard v. Estate of Ruth Schlesinger, et al***	12-cv-02790	Foley Hoag LLP Kenneth S. Leonetti (kleonetti@foleyhoag.com) Schlesinger Gannon & Lazetera LLP Thomas P. Gannon	Missing Consolidated Briefing Orders: • Stern v. Marshall

			(tgannon@sglllp.com) Ross Katz (rkatz@sglllp.com)	
78.	***Picard v. 1998 William Gershen Revocable Trust, et al***	12-cv-02791	Foley Hoag LLP Kenneth S. Leonetti (kleonetti@foleyhoag.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
79.	***Picard vs. Dawn Pascucci Barnard, et al.***	12-cv-02792	King & Spalding LLP Arthur J. Steinberg (asteinberg@kslaw.com) Heath D. Rosenblat (hrosenblat@kslaw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
80.	***Picard v. Dean L. Greenberg***	12-cv-02794	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)	Missing Consolidated Briefing Orders: • Stern v. Marshall
81.	***Picard v. Estate of Samuel Robert Roitenberg, et al.***	12-cv-02795	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)	Missing Consolidated Briefing Orders: • Stern v. Marshall

82.	***Picard v. Sheldon Shaffer, et al.***	12-cv-02796	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)	Missing Consolidated Briefing Orders: • Stern v. Marshall
83.	***Picard v. Sheldon Shaffer Trust Dtd 3/26/1996, et al.***	12-cv-02797	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)	Missing Consolidated Briefing Orders: • Stern v. Marshall
84.	***Picard v. Sidney Ladin Revocable Trust Dated 12/30/96, et al.***	12-cv-02798	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)	Missing Consolidated Briefing Orders: • Stern v. Marshall
85.	***Picard vs. Samuel Robinson***	12-cv-02799	Klestadt & Winters LLP Tracy L. Klestadt (tklestadt@klestadt.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall

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86.	***Picard v. UBS AG, UBS (Luxembourg) S.A., et al*** (Reliance Management (BVI) Limited and Reliance Management (Gibraltar) Limited – Moving Parties)	12-cv-02802	Klestadt & Winters LLP Tracy L. Klestadt (tklestadt@klestadt.com) Brendan M. Scott (bscott@klestadt.com) Seward & Kissel LLP Mark J. Hyland (hyland@sewkis.com) Mandy DeRoche (deroche@sewkis.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
87.	***Picard v. Defender Limited, et al***	12-cv-02871	Klestadt & Winters LLP Tracy L. Klestadt (tklestadt@klestadt.com) Brendan M. Scott (bscott@klestadt.com) Seward & Kissel LLP Mark J. Hyland (hyland@sewkis.com) Mandy DeRoche (deroche@sewkis.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
88.	***Picard vs. The Estate of Doris Igoin, et al.***	12-cv-02872	Kelley Drye & Warren LLP Jonathan K. Cooperman (Jcooperman@KelleyDrye.com) Seungwhan Kim (skim@kelleydrye.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
89.	***Picard vs. Burton R. Sax***	12-cv-02873	Meltzer, Lippe, Goldstein & Breitsone, LLP Pedram A. Tabibi (ptabibi@meltzerlippe.com) Sally M. Donahue	Missing Consolidated Briefing Orders: • Stern v. Marshall

			(sdonahue@meltzerlippe.com)	
90.	***Picard v. Sax-Bartels Associates, Limited Partnership***	12-cv-02874	Meltzer, Lippe, Goldstein & Breitsone, LLP Pedram A. Tabibi (ptabibi@meltzerlippe.com) Sally M. Donahue (sdonahue@meltzerlippe.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
91.	***Picard vs. The 1995 Jack Parker Descendant Trust No. 1, et al.***	12-cv-02875	Kasowitz, Benson, Torres, & Friedman LLP Marc E. Kasowitz (mkasowitz@kasowitz.com) Daniel J. Fetterman (dfetterman@kasowitz.com) David J. Mark (dmark@kasowitz.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
92.	***Picard vs. JRAG, LLC, et al.***	12-cv-02876	Kasowitz, Benson, Torres, & Friedman LLP Marc E. Kasowitz (mkasowitz@kasowitz.com) Daniel J. Fetterman (dfetterman@kasowitz.com) David J. Mark (dmark@kasowitz.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
93.	***Picard v. KBC Investments Limited,***	12-cv-02877	Sidley Austin LLP Alan M. Unger (aunger@sidley.com) Bryan Krakauer (bkrakauer@sidley.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
94.	***Picard v. Meritz Fire & Marine Insurance Co. Ltd.***	12-cv-02878	Steptoe & Johnson LLP Kristin Darr (kdarr@steptoe.com) Seong H. Kim (skim@steptoe.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
95.	***Picard v. The Article Fourth Non-Exempt Trust Created Under the Leo M. Klein***	12-cv-02879	Blank Rome LLP James V. Masella, III	Missing Consolidated Briefing Orders:

	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)	• Stern v. Marshall
96.	***Picard v. Korea Exchange Bank***	12-cv-02880	King & Spalding LLP Richard A. Cirillo (rcirillo@kslaw.com) Joshua Edgemon (jedgemon@kslaw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
97.	***Picard v. National Bank of Kuwait***	12-cv-02881	King & Spalding LLP Richard A. Cirillo (rcirillo@kslaw.com) Joshua Edgemon (jedgemon@kslaw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
98.	***Picard v. XYZ2 Corp. [Redacted - Under Seal]***	12-cv-02882	Cooley LLP Lawrence C. Gottlieb (lgottlieb@cooley.com) Michael A. Klein (mklein@cooley.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
99.	***Picard v. Howard Kaye***	12-cv-02884	McClaughlin & Stern, LLP Lee S. Shalov (lshalov@mclaughlinstern.com) Marc Rosenberg (mrosenberg@mclaughlinstern.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
100.	***Picard v. Mildred S. Poland, et al***	12-cv-02885	McClaughlin & Stern, LLP Lee S. Shalov (lshalov@mclaughlinstern.com) Marc Rosenberg (mrosenberg@mclaughlinstern.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
101.	***Picard v. Bernard Gordon, et al.***	12-cv-02922	Ruskin Moscou Faltischeck, P.C. Mark S. Mulholland (mmulholland@rmfpc.com) Thoams A. Telesca (ttelesca@rmfpc.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall

102.	***Picard vs. George E. Nadler***	12-cv-02923	Ingram Yuzek Gainen Carroll & Bertolotti, LLP Daniel L. Carroll (dcarroll@ingramllp.com) Jennifer B. Schain (jschain@ingramllp.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
103.	***Picard v. Janis Berman***	12-cv-02924	Ingram Yuzek Gainen Carroll & Bertolotti, LLP Daniel L. Carroll (dcarroll@ingramllp.com) Jennifer B. Schain (jschain@ingramllp.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
104.	***Picard vs. Candice Nadler Revocable Trust DTD 10/18/01, et al.***	12-cv-02925	Ingram Yuzek Gainen Carroll & Bertolotti, LLP Daniel L. Carroll (dcarroll@ingramllp.com) Jennifer B. Schain (jschain@ingramllp.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
105.	***Picard v. Loeb Living Trust, et al***	12-cv-02926	Katten Muchin Rosenman LLP Anthony L. Paccione (anthony.paccione@kattenlaw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
106.	***Picard v. Leon Flax, et al.***	12-cv-02928	Katten Muchin Rosenman LLP Anthony L. Paccione anthony.paccione@kattenlaw.com Brian L. Muldrew brian.muldrew@kattenlaw.com	Missing Consolidated Briefing Orders: • Stern v. Marshall
107.	***Picard vs. Scott Gottlieb, et al.***	12-cv-02931	Day Pitney LLP Joshua W. Cohen (jwcohen@daypitney.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
108.	***Picard v. PetcareRX, Inc.***	12-cv-02932	Dickstein Shapiro LLP Deborah A. Skakel	Missing Consolidated Briefing Orders:

			(Skakeld@dicksteinshapiro.com) Shaya M. Berger (bergers@dicksteinshapiro.coom)	• Stern v. Marshall
109.	***Picard v. Merkin, et al.***	12-cv-02933	Dechert LLP Andrew J. Levander (andrew.levander@dechert.com) Neil A. Steiner (neil.steiner@dechert.com) Reed Smith LLP James C. McCarroll (jmccarroll@reedsmith.com) Jordan W. Siev (jsiev@reedsmith.com) John L. Scott (jlscott@reedsmith.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
110.	***Picard v. Orbita Capital Return Strategy Limited***	12-cv-02934	Dechert LLP Gary Mennitt (gary.mennitt@dechert.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
111.	***Picard v. The Robert Auerbach Revocable Trust, et al.***	12-cv-02975	Folkenflik & McGerity Max Folkenflik (MFolkenflik@fmlaw.net)	Missing Consolidated Briefing Orders: • Stern v. Marshall
112.	***Picard v. CRS Revocable Trust, et al.***	12-cv-02976	Folkenflik & McGerity Max Folkenflik (MFolkenflik@fmlaw.net)	Missing Consolidated Briefing Orders: • Stern v. Marshall
113.	***Picard v. Robert S. Bernstein***	12-cv-02977	Folkenflik & McGerity Max Folkenflik (MFolkenflik@fmlaw.net)	Missing Consolidated Briefing Orders: • Stern v. Marshall
114.	***Picard v. Gutmacher Enterprises, LP, et al***	12-cv-02978	Folkenflik & McGerity Max Folkenflik (MFolkenflik@fmlaw.net)	Missing Consolidated Briefing Orders: • Stern v. Marshall

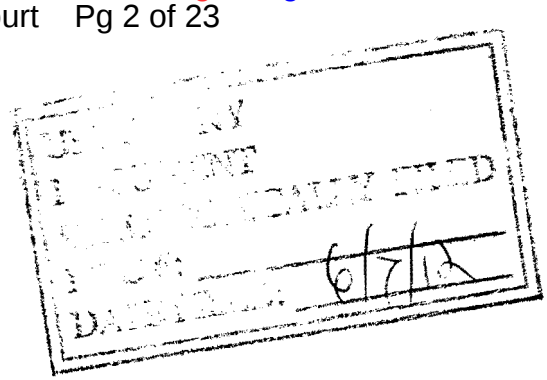
115.	***Picard v. The S. James Coppersmith Charitable Remainder Unitrust, et al.***	12-cv-02979	Folkenflik & McGerity Max Folkenflik (MFolkenflik@fmlaw.net)	Missing Consolidated Briefing Orders: • Stern v. Marshall
116.	***Picard v. Atlantic Security Bank***	12-cv-02980	Arnold & Porter LLP Scott B. Schreiber (Scott.Schreiber@aporter.com) Andrew T. Karron (Andrew.Karron@aporter.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
117.	***Picard v. Cardinal Management Inc., et al***	12-cv-02981	Clifford Chance US LLP Jeff E. Butler (jeff.butler@cliffordchance.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
118.	***Picard v. Radcliff Investments Limited, et al.***	12-cv-02982	Clifford Chance US LLP Jeff E. Butler (jeff.butler@cliffordchance.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
119.	***Picard v. Amy Joel***	12-cv-03100	Jaspan Schlesinger LLP Steven R. Schlesinger (sschlesinger@jaspanllp.com) Shannon Anne Scott (sscott@jaspanllp.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
120.	***Picard v. Robert A. Luria, et al***	12-cv-03101	Jaspan Schlesinger LLP Steven R. Schlesinger (sschlesinger@jaspanllp.com) Shannon Anne Scott (sscott@jaspanllp.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
121.	***Picard v. Amy J. Luria, et al.***	12-cv-03102	Jaspan Schlesinger LLP Steven R. Schlesinger (sschlesinger@jaspanllp.com) Shannon Anne Scott (sscott@jaspanllp.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall

122.	***Picard v. The Estate of Gladys C. Luria, et al.***	12-cv-03104	Jaspan Schlesinger LLP Steven R. Schlesinger (sschlesinger@jaspanllp.com) Shannon Anne Scott (sscott@jaspanllp.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
123.	***Picard v. Patricia Samuels, et al.***	12-cv-03105	Jaspan Schlesinger LLP Steven R. Schlesinger (sschlesinger@jaspanllp.com) Shannon Anne Scott (sscott@jaspanllp.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
124.	***Picard v. Sylvia Joel, et al.***	12-cv-03106	Jaspan Schlesinger LLP Steven R. Schlesinger (sschlesinger@jaspanllp.com) Shannon Anne Scott (sscott@jaspanllp.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
125.	***Picard vs. The LDP Corp. Profit Sharing Plan and Trust, et al.***	12-cv-03107	Jaspan Schlesinger LLP Steven R. Schlesinger (sschlesinger@jaspanllp.com) Shannon Anne Scott (sscott@jaspanllp.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall • Antecedent Debt
126.	***Picard v. Jeffrey Shankman***	12-cv-03108	Jaspan Schlesinger LLP Steven R. Schlesinger (sschlesinger@jaspanllp.com) Shannon Anne Scott (sscott@jaspanllp.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall
127.	***Picard v. Pictet et Cie***	12-cv-03402	Debevoise & Plimpton LLP Michael E. Wiles (mewiles@debevoise.com)	Missing Consolidated Briefing Orders: • Section 546(e) • Stern v. Marshall
128.	***Picard v. Stanley Plesent***	12-cv-03403	Pro Se Defendant 24 Maple Avenue Larchmont, NY 10538 914-834-8260	Missing Consolidated Briefing Orders: • Stern v. Marshall • Antecedent Debt

129.	***Picard v. Merrill Lynch International***	12-cv-03486	Arnold & Porter LLP Pamela A. Miller (Pamela.Miller@aporter.com) Kent A. Yalowitz (Kent.Yalowitz@aporter.com)	Missing Consolidated Briefing Orders: • Section 546(e) • Stern v. Marshall
130.	***Picard v. Merrill Lynch Bank (Suisse) SA***	12-cv-03487	Arnold & Porter LLP Pamela A. Miller (Pamela.Miller@aporter.com) Kent A. Yalowitz (Kent.Yalowitz@aporter.com)	Missing Consolidated Briefing Orders: • Section 546(e) • Stern v. Marshall
131.	***Picard v. Fullerton Capital PTE. Ltd.***	12-cv-03488	Arnold & Porter LLP Pamela A. Miller (Pamela.Miller@aporter.com) Kent A. Yalowitz (Kent.Yalowitz@aporter.com)	Missing Consolidated Briefing Orders: • Section 546(e) • Stern v. Marshall
132.	***Picard v. Cathay United Bank, et al.***	12-cv-03489	Baker & McKenzie LLP David W. Parham (david.Parham@bakermckenzie.com)	Missing Consolidated Briefing Orders: • Section 546(e) • Stern v. Marshall
133.	***Picard v. Mistral (SPC)***	12-cv-03532	O'Melveny & Myers LLP William J. Sushon (wsushon@omm.com) Shiva Eftekhari (seftekhari@omm.com	Missing Consolidated Briefing Orders: • Section 546(e)
134.	***Picard v. Zephyros Limited***	12-cv-03533	O'Melveny & Myers LLP William J. Sushon (wsushon@omm.com) Shiva Eftekhari (seftekhari@omm.com	Missing Consolidated Briefing Orders: • Section 546(e)
135.	***Picard v. Srione, LLC, et al.***	12-cv-04092	Law Offices of Stephen Goldstein Stephen Goldstein Sgoldlaw@gmail.com	Missing Consolidated Briefing Orders: • Stern v. Marshall • Antecedent Debt

136.	***Picard vs. Gail Nessel***	12-cv-04178	Halperin Battaglia Raicht, LLP Alan D. Halperin (ahalperin@halperinlaw.net) Scott A. Ziluck (sziluck@halperinlaw.net) Neal W. Cohen (ncohen@halperinlaw.net)	Missing Consolidated Briefing Orders: • Stern v. Marshall • Antecedent Debt
137.	***Picard v. Janet Jaffe Trust UA Dtd 4/20/90, et al***	12-cv-04188	Bernfeld, DeMatteo & Bernfeld, LLP David Bernfeld (davidbernfeld@bernfeld-dematteo.com) Jeffrey Bernfeld (jeffreybernfeld@bernfeld-dematteo.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall • Antecedent Debt • IRA Mandatory Withdrawals
138.	***Picard v. Laurel Kohl and Jodi Kohl***	12-cv-04189	Okin, Hollander & DeLuca LLP Paul S. Hollander (phollander@ohdlaw.com) Gregory S. Kinoian (gkinoian@ohdlaw.com)	Missing Consolidated Briefing Orders: • Stern v. Marshall • Antecedent Debt
139.	***Picard v. Royal Bank of Canada, et al.***	12-cv-04939-JSR	Katten Muchin Rosenman LLP Anthony L. Paccione (anthony.paccione@kattenlaw.com) Brian M. Sabados (brian.sabados@kattenlaw.com) Mark T. Ciani (mark.ciani@kattenlaw.com)	Added to Consolidated Briefing on: • Good Faith
140.	***Picard v. Intesa Sanpaolo S.p.A., et al.***	12-cv-06291; 12-cv-07157	Davis Polk & Wardwell LLP Elliot Moskowitz (elliot.moskowitz@davispolk.com) Andrew Ditchfield (andrew.ditchfield@davispolk.com)	Added to Consolidated Briefing on: • Section 550(a)

EXHIBIT 4



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 **ORDER**
In re: MADOFF SECURITIES	**(Relates to consolidated proceedings on Extraterritoriality Issues)**

PERTAINS TO CASES LISTED IN EXHIBIT A

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

WHEREAS:

A. Pending before the Court are various adversary proceedings commenced by Irving H. Picard, as trustee ("Trustee"), in connection with the substantively consolidated liquidation proceedings of Bernard L. Madoff Investment Securities LLC ("BLMIS") and the estate of Bernard L. Madoff under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.* ("SIPA"), in which the Trustee has sought to avoid or recover certain transfers made by BLMIS in the 90 day, two year, six year and/or longer period(s) preceding December 11, 2008 (the "Transfers"). In these proceedings, certain defendants (the "Extraterritoriality Defendants") have sought withdrawal of the reference from the Bankruptcy Court to this Court, among other grounds, for the Court's determination of the Extraterritoriality Issue as defined below.

B. Exhibit A hereto, prepared by the Trustee's counsel, identifies the single cases or, in certain instances, the lead case of related adversary proceedings where defendants are represented by common counsel, in which Extraterritoriality Defendants have filed motions to withdraw the reference (or joined in such motions, which joinders are deemed included in the scope of this Order unless expressly stated otherwise on Exhibit A) from the Bankruptcy Court to this Court to determine whether SIPA and/or the Bankruptcy Code as incorporated by SIPA apply extraterritorially, permitting the Trustee to avoid the initial Transfers that were received abroad or to recover from initial, immediate or mediate foreign transferees (the "Extraterritoriality Issue"). Such cases and joinders are referred to herein as the "Adversary Proceedings."

C. The Court, over the objections of the Trustee and the Securities Investor Protection Corporation ("SIPC"), previously withdrew the reference from the Bankruptcy Court to consider issues concerning whether the Trustee may avoid or recover Transfers that BLMIS made to certain defendants abroad. *See* Primeo Fund, et al., No. 12 MC 0115 (S.D.N.Y. Order dated May 15, 2012) [ECF No. 97] (the "Extraterritoriality Withdrawal Ruling").

D. Pursuant to Extraterritoriality Withdrawal Ruling, the Court has decided to consolidate briefing on the merits of the Extraterritoriality Issue, and the resolution of this issue will govern all pending motions to withdraw the reference and those pending motions to dismiss that have not yet been fully briefed and argued. See Extraterritorial Withdrawal Ruling, p. 10-11; SIPC v. Bernard L. Madoff Inv. Secs. LLC (In re Madoff Secs.), No. 12 MC 0115 (S.D.N.Y. Order dated Apr. 19, 2012) [ECF No. 22] (the "Common Briefing Order"). The Court's Extraterritoriality Withdrawal Ruling also directed counsel for the Trustee to convene a

conference among the Extraterritoriality Defendants and to schedule consolidated proceedings no later than May 23, 2012.

E. On May 23, 2012 counsel for the Trustee, SIPC, and the Extraterritoriality Defendants convened a conference call with the Court, and the Court thereafter ordered that the parties submit by no later than June 6, 2012 a proposed order agreed to by the parties for withdrawal and briefing of a consolidated motion to dismiss related to the Extraterritoriality Issue.

BASED ON THE FOREGOING, IT IS HEREBY ORDERED AS FOLLOWS:

1. The reference of the Adversary Proceedings listed in Exhibit A is withdrawn, in part, from the Bankruptcy Court to this Court solely with respect to the Extraterritoriality Defendants for the limited purpose of hearing and determining whether SIPA and/or the Bankruptcy Code as incorporated by SIPA apply extraterritorially, permitting the Trustee to avoid the initial Transfers that were received abroad or to recover from initial, immediate or mediate foreign transferees. Except as otherwise provided herein or in other orders of this Court, the reference to the Bankruptcy Court is otherwise maintained for all other purposes.

2. The Trustee and SIPC are deemed to have raised, in response to all pending motions for withdrawal of the reference based on the Extraterritoriality Issue, all arguments previously raised by either or both of them in opposition to all such motions granted by the Extraterritoriality Withdrawal Ruling, and such objections or arguments are deemed to be overruled, solely with respect to the Extraterritoriality Issue, for the reasons stated in the Extraterritoriality Withdrawal Ruling.

3. All objections that could be raised by the Trustee and/or SIPC to the pending motions to withdraw the reference in the Adversary Proceedings, and the defenses and

responses thereto that may be raised by the affected defendants, are deemed preserved on all matters.

4. On or before July 13, 2012, the Extraterritoriality Defendants shall file a single consolidated motion to dismiss pursuant to Fed. R. Civ. P. 12 (made applicable to the Adversary Proceeding by Fed. R. Bankr. P. 7012) and a single consolidated supporting memorandum of law, not to exceed forty (40) pages (together, the "Extraterritoriality Motion to Dismiss").

5. The Trustee and SIPC shall each file a memorandum of law in opposition to the Extraterritoriality Motion to Dismiss, not to exceed forty (40) pages each, addressing the Extraterritoriality Withdrawal Ruling Issue (the "Trustee's Opposition") on or before August 17, 2012.

6. Young Conaway Stargatt & Taylor, LLP, which is conflicts counsel for the Trustee, and Windels Marx Lane & Mittendorf, LLP, which is special counsel to the Trustee, each may file a joinder, not to exceed two (2) pages (excluding exhibits identifying the relevant adversary proceedings), to the Trustee's Opposition, on behalf of the Trustee in certain of the adversary proceedings listed on Exhibit A hereto on or before August 17, 2012. In either case, the respective joinders may only specify what portions of the Trustee's Opposition are joined and shall not make or offer any additional substantive argument.

7. The Extraterritoriality Defendants shall file one consolidated reply brief, not to exceed twenty (20) pages, on or before August 31, 2012 (the "Reply Brief"). In the event the Trustee files an amended complaint (the "Amended Complaint") in any of the Adversary Proceedings after the Extraterritoriality Motion to Dismiss is filed, the Reply Brief shall include a reference (by civil action number and docket number only) to a representative Amended Complaint filed by the Trustee against Extraterritoriality Defendants. Any further requirement

that the Amended Complaints subject to the Extraterritoriality Motion to Dismiss be identified or filed is deemed waived and satisfied. In the event the Trustee files an Amended Complaint, he shall, at the time the Amended Complaint is filed, provide the Extraterritoriality Defendants a blackline reflecting the changes made in the Amended Complaint from the then operative complaint.

8. The Court will hold oral argument on the Extraterritoriality Motion to Dismiss on September 21, 2012, at 4:00 p.m. (the "Hearing Date").

9. On or before August 31, 2012, the Extraterritoriality Defendants shall designate one lead counsel to advocate their position at oral argument on the Hearing Date, but any other attorney who wishes to be heard may appear and so request.

10. The caption displayed on this Order shall be used as the caption for all pleadings, notices and briefs to be filed pursuant to this Order.

11. All communications and documents (including drafts) exchanged between and among any of the defendants in any of the adversary proceedings, and/or their respective attorneys, shall be deemed to be privileged communications and/or work product, as the case may be, subject to a joint interest privilege.

12. This Order is without prejudice to any and all grounds for withdrawal of the reference (other than the Extraterritoriality Issue) raised in the Adversary Proceedings by the Extraterritoriality Defendants and any matter that cannot properly be raised or resolved on a Rule 12 motion, all of which are preserved.

13. Nothing in this Order shall: (a) waive or resolve any issue not specifically raised in the Extraterritoriality Motion to Dismiss; (b) waive or resolve any issue raised or that could be raised by any party other than with respect to the Extraterritoriality Issue, including related issues

that cannot be resolved on a motion under Fed. R. Civ. P. 12; or (c) notwithstanding Fed. R. Civ. P. 12(g)(2) or Fed. R. Bankr. P. 7012(g)(2), except as specifically raised in the Extraterritoriality Motion to Dismiss, limit, restrict or impair any defense or argument that has been raised or could be raised by any Extraterritoriality Defendant in a motion to dismiss under Fed. R. Civ. P. 12 or Fed. R. Bankr. P. 7012, or any other defense or right of any nature available to any Extraterritoriality Defendant (including, without limitation, all defenses based on lack of personal jurisdiction or insufficient service of process), or any argument or defense that could be raised by the Trustee or SIPC in response thereto.

14. Nothing in this Order shall constitute an agreement or consent by any Extraterritoriality Defendant to pay the fees and expenses of any attorney other than such defendant's own retained attorney. This paragraph shall not affect or compromise any rights of the Trustee or SIPC.

15. This Order is without prejudice to and preserves all objections of the Trustee and SIPC to timely-filed motions for withdrawal of the reference currently pending before this Court (other than the withdrawal of the reference solely with respect to the Extraterritoriality Issue) with respect to the Adversary Proceedings, and the defenses and responses thereto that may be raised by the affected defendants, are deemed preserved on all matters.

16. The procedures established by this Order, or by further Order of this Court, shall constitute the sole and exclusive procedures for determination of the Extraterritoriality Issue in the Adversary Proceedings (except for any appellate practice resulting from such determination), and this Court shall be the forum for such determination. To the extent that briefing or argument schedules were previously established with respect to the Extraterritoriality Issue in any of the Adversary Proceedings, this Order supersedes all such schedules solely with respect to the

Extraterritoriality Issue. To the extent that briefing or argument schedules are prospectively established with respect to motions to withdraw the reference or motions to dismiss in any of the Adversary Proceedings, the Extraterritoriality Issue shall be excluded from such briefing or argument and such order is vacated. For the avoidance of doubt, to the extent any of the Extraterritoriality Defendants have issues other than the Extraterritoriality Issue or issues set forth in the Common Briefing Order that were withdrawn, those issues will continue to be briefed on the schedule previously ordered by the Court. Except as stated in this paragraph, this Order shall not be deemed or construed to modify, withdraw or reverse any prior Order of the Court that granted withdrawal of the reference in any Adversary Proceeding for any reason.

SO ORDERED.

Dated: New York, New York
June 6, 2012

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

EXHIBIT A

1.	***Picard v. Primeo***	11-cv-06524-JSR	Morrison & Foerster LLP Gary S. Lee (glee@mofo.com) Joel C. Haims (jhaims@mofo.com) LaShann M. DeArcy (ldearcy@mofo.com) Kiersten A. Fletcher (kfletcher@mofo.com)
2.	***Picard v. ABN AMRO Bank N.V. (presently known as the Royal Bank of Scotland, N.V.), et al.*** (as filed by Rye Select Broad Market XL Portfolio Ltd.)	11-cv-06848-JSR	Morrison & Foerster LLP Gary S. Lee (glee@mofo.com) Joel C. Haims (jhaims@mofo.com) LaShann M. DeArcy (ldearcy@mofo.com) Kiersten A. Fletcher (kfletcher@mofo.com)
3.	***Picard v. ABN AMRO Bank N.V. (presently known as the Royal Bank of Scotland, N.V.), et al.*** (as filed by ABN AMRO Incorporated, ABN AMRO Bank, N.V.)	11-cv-06878-JSR	Allen & Overy LLP Michael S. Feldberg (michael.feldberg@allenovery.com) Bethany Kriss (bethany.kriss@allenovery.com)
4.	***Picard v. ABN AMRO (Ireland) Ltd. (F/N/A Fortis Prime Fund Solutions Bank (Ireland) Ltd.,), et al.*** (as filed by Rye Select Broad Market XL Portfolio Ltd.)	11-cv-06849-JSR	Morrison & Foerster LLP Gary S. Lee (glee@mofo.com) Joel C. Haims (jhaims@mofo.com) LaShann M. DeArcy (ldearcy@mofo.com) Kiersten A. Fletcher (kfletcher@mofo.com)

5.	***Picard v. ABN AMRO (Ireland) Ltd. (F/N/A Fortis Prime Fund Solutions Bank (Ireland) Ltd.,), et al.,*** (as filed by ABN AMRO Custodial Services (Ireland) Ltd., ABN AMRO Bank (Ireland), Ltd.)	11-cv-06877-JSR	Latham & Watkins Christopher Harris (christopher.harris@lw.com) Cameron Smith (cameron.smith@lw.com)
6.	***Picard v. Banco Bilbao Vizcaya Argentaria, S.A.***	11-cv-07100-JSR	Shearman & Sterling LLP Heather Kafele (hkafele@shearman.com) Joanna Shally (jshally@shearman.com)
7.	***Picard v. Federico Ceretti, et al.*** (as filed by Federico Ceretti, Carlo Grosso, FIM Limited and FIM Advisers LLP)	11-cv-07134-JSR	Paul Hastings LLP Jodi Kleinick (jodikleinick@paulhastings.com) Barry Sher (barrysher@paulhastings.com) Mor Wetzler (morwetzler@paulhastings.com)
8.	***Picard v. Oreades Sicav, et al.*** (as filed by BNP Paribas Investment Partners Luxembourg S.A., BGL BNP Paribas S.A. and BNP Paribas Securities Services S.A.)	11-cv-07763-JSR	Cleary Gottlieb Steen & Hamilton LLP Lawrence B. Friedman (lfriedman@cgsh.com) Breon S. Peace (bpeace@cgsh.com)
9.	***Picard v. Equity Trading Portfolio Ltd., et al.*** (as filed by BNP Paribas Arbitrage SNC)	11-cv-07810-JSR	Cleary Gottlieb Steen & Hamilton LLP Lawrence B. Friedman (lfriedman@cgsh.com) Breon S. Peace (bpeace@cgsh.com)
10.	***Picard v. BNP Paribas Arbitrage SNC***	12-cv-00641-JSR	Cleary Gottlieb Steen & Hamilton LLP Lawrence B. Friedman (lfriedman@cgsh.com) Breon S. Peace

			(bpeace@cgsh.com)
11.	***Picard v. Barclays Bank (Suisse) S.A., et al***	12-cv-01882-JSR	Hogan Lovells US LLP Marc J. Gottridge (marc.gottridge@hoganlovells.com) Andrew M. Behrman (andrew.behrman@hoganlovells.com)
12.	***Picard v. ABN AMRO Bank N.V. (presently known as The Royal Bank of Scotland, N.V.), et al***	12-cv-01939-JSR	Allen & Overy LLP Michael S. Feldberg (michael.feldberg@allenovery.com) Bethany Kriss (bethany.kriss@allenovery.com)
13.	**Picard v. Kohn, et al.** (as filed by UniCredit Bank Austria)	12-cv-02161-JSR	Sullivan & Worcester LLP Franklin B. Velie (fvelie@sandw.com) Jonathan Kortmansky (jkortmansky@sandw.com) Mitchell C. Stein (mstein@sandw.com)
14.	***Picard v. HSBC Bank, plc, et al.***(as filed by UniCredit Bank Austria)	12-cv-02162-JSR	Sullivan & Worcester LLP Franklin B. Velie (fvelie@sandw.com) Jonathan Kortmansky (jkortmansky@sandw.com) Mitchell C. Stein (mstein@sandw.com)
15.	***Picard v. HSBC Bank, plc, et al.***(as filed by UniCredit S.p.A. and Pioneer)	12-cv-02239-JSR	Skadden, Arps, Slate, Meagher, & Flom LLP (susan.saltzstein@Skadden.com) Marco E. Schnabl (Marco.Schnabl@Skadden.com)

			Jeremy A. Berman (jeremy.berman@Skadden.com) Jason C. Putter (jason.putter@skadden.com)
16.	***Picard v. Kohn, et al.*** (as filed by UniCredit S.p.A. and Pioneer)	12-cv-02240-JSR	Skadden, Arps, Slate, Meagher, & Flom LLP Susan L. Saltzstein (susan.saltzstein@Skadden.com) Marco E. Schnabl (Marco.Schnabl@Skadden.com) Jeremy A. Berman (jeremy.berman@Skadden.com) Jason C. Putter (jason.putter@skadden.com)
17.	***Picard v. Bank Julius Baer & Co., Ltd.***	12-cv-02311-JSR	McKool Smith P.C. John P. Cooney, Jr. (jcooney@mckoolsmith.com) Eric B. Halper (ehalper@mckoolsmith.com) Virginia I. Weber (vweber@mckoolsmith.com)
18.	***Picard v. Lion Global Investors Limited***	12-cv-02349-JSR	Proskauer Rose LLP Gregg M. Mashberg (gmashberg@proskauer.com) Richard L. Spinogatti (rspinogatti@proskauer.com)
19.	***Picard v. Grosvenor Investment Management Ltd., et al.***	12-cv-02351-JSR	Proskauer Rose LLP Richard L. Spinogatti (rspinogatti@proskauer.com)
20.	***Picard v. Inteligo Bank Ltd. Panama Branch f/k/a/ Blubank Ltd. Panama Branch***	12-cv-02364-JSR	Shearman & Sterling LLP Heather Kafele (hkafele@shearman.com) Joanna Shally (jshally@shearman.com) Jessica Bartlett

			(jessica.bartlett@shearman.com)
21.	***Picard v. Banca Carige, S.P.A.***	12-cv-02408-JSR	Kasowitz, Benson, Torres, & Friedman LLP David J. Mark (dmark@kasowitz.com)
22.	***Picard v. Somers Dublin Limited, et al.***	12-cv-02430-JSR	Cleary Gottlieb Steen & Hamilton LLP Evan A. Davis (edavis@cgsh.com) Thomas J. Moloney (tmoloney @cgsh.com)
23.	***Picard v. HSBC Bank, plc, et al.*** (as filed by the HSBC Defendants)	12-cv-02431-JSR	Cleary Gottlieb Steen & Hamilton LLP Charles J. Keeley (cjkeeley@cgsh.com) Tom Moloney (tmoloney@cgsh.com) Evan Davis (edavis@cgsh.com) David Brodsky (dbrodsky@cgsh.com)
24.	***Picard v. Banco Itau Europa Luxembourg S.A., et al***	12-cv-02432-JSR	Shearman & Sterling LLP Heather Kafele (hkafele@shearman.com) Joanna Shally (jshally@shearman.com)
25.	***Caceis Bank Luxembourg, et al.***	12-cv-02434-JSR	Kelley Drye & Warren LLP Thomas B. Kinzler (tkinzler@kelleydrye.com) Daniel Schimmel (dschimmel@kelleydrye.com) Jaclyn M. Metzinger (jmetzinger@kelleydrye.com)

26.	***Picard v. Banque Privee Espirito Santo S.A.***	12-cv-02442-JSR	Flemming Zulack Williamson Zauderer LLP Elizabeth A. O'Connor (eoconnor@fzwz.com) John F. Zulack (Jzulack@fzwz.com) Megan Davis (mdavis@fzwz.com)
27.	***Picard v. Nomura International PLC***	12-cv-02443-JSR	Shearman & Sterling LLP Brian H. Polovoy (bpolovoy@shearman.com) Christopher R. Fenton (Cfenton@shearman.com) Andrew Z. Lipson (alipson@shearman.com)
28.	***Picard v. Nomura Bank International PLC***	12-cv-02446-JSR	Shearman & Sterling LLP Brian H. Polovoy (bpolovoy@shearman.com) Christopher R. Fenton (Cfenton@shearman.com) Andrew Z. Lipson (alipson@shearman.com)
29.	***Picard v. The Sumitomo Trust and Banking Co., Ltd.***	12-cv-02481-JSR	Becker, Glynn, Melamed & Muffly LLP Zeb Landsman (zlandsman@beckerglynn.com) Jordan E. Stern (jstern@beckerglynn.com) Michelle Mufich (mmufich@beckerglynn.com)
30.	***Picard v. UBS AG, et al.*** (M&B Capital Advisers Sociedad de Valores, S.A., M&B Capital Advisers Gestion SGIIC, S.A. -	12-cv-02483-JSR	Cravath, Swaine & Moore LLP David Greenwald (dgreenwald@cravath.com) Richard Levin

	Moving Parties) **[Amended Motion to Withdraw]**		(rlevin@cravath.com)
31.	***Picard v. Unifortune Asset Management SGR SPA, et al.***	12-cv-02485-JSR	Cravath, Swaine & Moore LLP David Greenwald (dgreenwald@cravath.com) Richard Levin (rlevin@cravath.com)
32.	***Picard v. Trincaster Corporation***	12-cv-02486-JSR	Cravath, Swaine & Moore LLP David Greenwald (dgreenwald@cravath.com) Richard Levin (rlevin@cravath.com)
33.	***Picard v. Banque Syz & Co., SA***	12-cv-02489-JSR	Cravath, Swaine & Moore LLP David Greenwald (dgreenwald@cravath.com) Richard Levin (rlevin@cravath.com)
34.	***Picard v. Square One Fund Ltd., et al.***	12-cv-02490-JSR	Tannenbaum Helpern Syracuse & Hirschtritt LLP; Brune & Richard LLP. Tannenbaum Helpern Syracuse & Hirschtritt LLP Tammy P. Bieber (bieber@thsh.com) Brune & Richard LLP David Elbaum (delbaum@bruneandrichard.com) Bernfeld, DeMatteo & Bernfeld, LLP

			David Bernfeld (davidbernfeld@bernfeld-dematteo.com)
35.	***Picard v. Credit Agricole (Suisse) S.A., et al.***	12-cv-02494-JSR	Cleary Gottlieb Steen & Hamilton LLP Lawrence B. Friedman (lfriedman@cgsh.com)
36.	***Picard v. SNS Bank N.V., et al***	12-cv-02509-JSR	Wilmer Cutler Pickering Hale and Dorr LLP Andrea J. Robinson (andrea.robinson@wilmerhale.com) Charles C. Platt (charles.platt@wilmerhale.com) George W. Shuster, Jr. (george.shuster@wilmerhale.com)
37.	***Picard v. Quilvest Finance Ltd.***	12-cv-02580-JSR	Jones Day Thomas E. Lynch (telynch@jonesday.com) Scott J. Friedman (sjfriedman@jonesday.com)
38.	***Picard v. Arden Asset Management, Inc., et al.***	12-cv-02581-JSR	Seward & Kissel LLP M. William Munno (munno@sewkis.com) Mandy DeRoche (deroche@sewkis.com) Michael B. Weitman (weitman@sewkis.com)
39.	***Picard v. Banque J. Safra (Suisse) SA***	12-cv-02587-JSR	Sullivan & Cromwell LLP Robinson B. Lacy (lacyr@sullcrom.com) Joshua Fritsch (fritschj@sullcrom.com) Angelica M. Sinopole (sinopolea@sullcrom.com)

40.	***Picard v. Vizcaya Partners Limited, et al.***	12-cv-02588-JSR	Sullivan & Cromwell LLP (for Bank J. Safra (Gibraltar) Limited) Robinson B. Lacy (lacyr@sullcrom.com) Joshua Fritsch (fritschj@sullcrom.com) Angelica M. Sinopole (sinopolea@sullcrom.com) Katten Muchin Rosenman LLP (for Zeus Partners Ltd) Anthony L. Paccione (anthony.paccione@kattenlaw.com)
41.	***Picard v. Abu Dhabi Investment Authority***	12-cv-02616-JSR	Quinn Emanuel Urquhart & Sullivan, LLP Peter E. Calamari (petercalamari@quinnemanuel.com) Marc L. Greenwald (marcgreenwald@quinnemanuel.com) Eric M. Kay (erickay@quinnemanuel.com) David S. Mader (davidmader@quinnemanuel.com)
42.	***Picard v. Fairfield Sentry Limited, et al.*** (as filed by Chester Global Strategy Fund Limited, Chester Global Strategy Fund, LP, Irongate Global Strategy Fund Limited, Fairfield Greenwich Fund	12-cv-02619-JSR	Simpson Thacher & Barlett LLP Mark G. Cunha (mcunha@stblaw.com) Peter E. Kazanoff (pkazanoff@stblaw.com) Wollmuth Maher & Deutsch LLP

	(Luxembourg), Fairfield Investment Fund Limited, Fairfield Investors (Euro) Ltd., and Stable Fund LP)		Frederick R. Kessler (fkessler@wmd-law.com) Paul R. DeFilippo (pdefilippo@wmd-law.com) Michael P. Burke (mburke@wmd-law.com) Debevoise & Plimpton LLP Mark P. Goodman (mpgoodman@debevoise.com) O'Shea Partners LLP Sean F. O'Shea (soshea@osheapartners.com) Michael E. Petrella (mpetrella@osheapartners.com) White & Case LLP Glenn M. Kurtz (gkurtz@whitecase.com) Andrew W. Hammond (ahammond@whitecase.com) Covington & Burling LLP Bruce A. Baird (bbaird@cov.com) Kasowitz, Benson, Torres & Friedman LLP Daniel J. Fetterman (dfetterman@kasowitz.com) Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer, P.C. Edward M. Spiro (espiro@maglaw.com)

			Dechert LLP Andrew J. Levander (andrew.levander@dechert.com) David S. Hoffner (david.hoffner@dechert.com)
43.	***Picard v. Fairfield Sentry Limited, et al.*** *(Joint Memorandum filed by various defendants)*	12-cv-02638-JSR	Simpson Thacher & Bartlett LLP Mark G. Cunha (mcunha@stblaw.com) Peter E. Kazanoff (pkazanoff@stblaw.com) Wollmuth Maher & Deutsch LLP Frederick R. Kessler (fkessler@wmd-law.com) Paul R. DeFilippo (pdefilippo@wmd-law.com) Michael P. Burke (mburke@wmd-law.com) Debevoise & Plimpton LLP Mark P. Goodman (mpgoodman@debevoise.com) O'Shea Partners LLP Sean F. O'Shea (soshea@osheapartners.com) Michael E. Petrella (mpetrella@osheapartners.com) White & Case LLP Glenn M. Kurtz (gkurtz@whitecase.com) Andrew W. Hammond (ahammond@whitecase.com)

			Covington & Burling LLP Bruce A. Baird (bbaird@cov.com) Kasowitz, Benson, Torres & Friedman LLP Daniel J. Fetterman (dfetterman@kasowitz.com) Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer, P.C. Edward M. Spiro (espiro@maglaw.com) Dechert LLP Andrew J. Levander (andrew.levander@dechert.com) David S. Hoffner (david.hoffner@dechert.com)
44.	***Picard v. Plaza Investments International Limited, et al.***	12-cv-02646-JSR	Debevoise & Plimpton LLP Joseph P. Moodhe (Jpmoodhe@debevoise.com) Shannon Rose Selden (srselden@debevoise.com)
45.	***Picard v. Defender Limited, et al*** (Defender Limited, Reliance Management (BVI) Limited, Reliance Management (Gibraltar) Limited and Tim Brockmann – Moving Parties)	12-cv-02800-JSR	Klestadt & Winters LLP Tracy L. Klestadt (tklestadt@klestadt.com) Brendan M. Scott (bscott@klestadt.com)
46.	***Picard v. UBS AG, et al.*** (Reliance Management (BVI) Limited and Reliance Management (Gibraltar) Limited	12-cv-02802-JSR	Klestadt & Winters LLP Tracy L. Klestadt (tklestadt@klestadt.com) Brendan M. Scott

	– Moving Parties)		(bscott@klestadt.com)
47.	***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)
48.	***Picard v. KBC Investments Limited,***	12-cv-02877-JSR	Sidley Austin LLP Alan M. Unger (aunger@sidley.com) Bryan Krakauer (bkrakauer@sidley.com)
49.	***Picard v. Meritz Fire & Marine Insurance Co. Ltd.***	12-cv-02878-JSR	Steptoe & Johnson LLP Kristin Darr (kdarr@steptoe.com) Seong H. Kim (skim@steptoe.com)
50.	***Picard v. Leon Flax, et al.***	12-cv-02928-JSR	Katten Muchin Rosenman LLP Anthony L. Paccione anthony.paccione@kattenlaw.com Brian L. Muldrew brian.muldrew@kattenlaw.com
51.	***Picard v. Orbita Capital Return Strategy Limited***	12-cv-02934-JSR	Dechert LLP Gary Mennitt (gary.mennitt@dechert.com)
52.	***Picard v. Atlantic Security Bank***	12-cv-02980-JSR	Arnold & Porter LLP Scott B. Schreiber (Scott.Schreiber@aporter.com) Andrew T. Karron (Andrew.Karron@aporter.com)

53.	***Picard v. Cardinal Management Inc., et al***	12-cv-02981-JSR	Clifford Chance US LLP Jeff E. Butler (jeff.butler@cliffordchance.com)
54.	***Picard v. Radcliff Investments Limited, et al.***	12-cv-02982-JSR	Clifford Chance US LLP Jeff E. Butler (jeff.butler@cliffordchance.com)
55.	***Picard v. Pictet et Cie***	12-cv-03402-JSR	Debevoise & Plimpton LLP Michael E. Wiles (mewiles@debevoise.com)
56.	***Picard v. Merrill Lynch International***	12-cv-03486-JSR	Arnold & Porter LLP Pamela A. Miller (Pamela.Miller@aporter.com) Kent A. Yalowitz (Kent.Yalowitz@aporter.com)
57.	***Picard v. Merrill Lynch Bank (Suisse) SA***	12-cv-03487-JSR	Arnold & Porter LLP Pamela A. Miller (Pamela.Miller@aporter.com) Kent A. Yalowitz (Kent.Yalowitz@aporter.com)
58.	***Picard v. Fullerton Capital PTE. Ltd.***	12-cv-03488-JSR	Arnold & Porter LLP Pamela A. Miller (Pamela.Miller@aporter.com) Kent A. Yalowitz (Kent.Yalowitz@aporter.com)
59.	***Picard v. Cathay United Bank, et al.***	12-cv-03489-JSR	Baker & McKenzie LLP David W. Parham (david.Parham@bakermckenzie.com)

60.	***Picard v. Standard Chartered Financial Services (Luxembourg) S.A., et al***	12-cv-04328	Sullivan & Cromwell LLP Robinson B. Lacy (lacyr@sullcrom.com) Sharon L. Nelles (nelless@sullcrom.com) Patrick B. Berarducci (berarduccip@sullcrom.com)

Bankruptcy Court Docket Sheet

WDREF, DirApl, CLOSED, APPEAL

U.S. Bankruptcy Court
Southern District of New York (Manhattan)
Adversary Proceeding #: 12-01694-smb

Assigned to: Judge Stuart M. Bernstein
Lead BK Case: 08-99000
Lead BK Title: Administrative Case Re: 08-01789 (Securities Invest
Lead BK Chapter: 11
Demand: $10000000

Date Filed: 06/06/12
Date Terminated: 03/07/17

Nature[s] of Suit: 14 Recovery of money/property - other

Plaintiff

Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC

represented by **Thomas L. Long**
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V.

Defendant

BANQUE CANTONALE VAUDOISE

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LEAD ATTORNEY

Filing Date	#	Docket Text
06/06/2012	1 (90 pgs; 4 docs)	Adversary case 12-01694. Complaint against BANQUE CANTONALE VAUDOISE . Nature (s) of Suit: (14 (Recovery of money/property - other)) Filed by David J. Sheehan, David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C) (Sheehan, David) (Filing fee $293.00, Receipt # 635 CHARGE TO THE ESTATE) Modified on 6/7/2012 (Slinger, Kathy). (Entered: 06/06/2012)
06/06/2012		Judge Burton R. Lifland added to the case. (Gomez, Jessica). (Entered: 06/07/2012)
06/07/2012		Receipt of Complaint(12-01694) [cmp,cmp] (293.00) Filing Fee. Receipt number 635. Fee amount 293.00. (Slinger) (Entered: 06/07/2012)
06/08/2012	2 (1 pg)	Summons and Notice of Pre-Trial Conference against BANQUE CANTONALE VAUDOISE Answer Due: 7/9/2012. Filed by Clerk's Office of the United States Bankruptcy Court. with Pre-Trial Conference set for 10/31/2012 at 10:00 AM at Courtroom 623 (BRL), (Campbell, Tiffany) (Entered: 06/08/2012)
09/10/2012	3 (3 pgs)	Stipulation *Extending Time to Respond and Adjourning the Pre-Trial Conference* filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 09/10/2012)

09/24/2012	4 (5 pgs)	Affidavit of Service *of Summons and Complaint* (related document(s)1, 2) filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 09/24/2012)
12/04/2012	5 (2 pgs)	Motion to Withdraw the Reference filed by Megan P. Davis on behalf of BANQUE CANTONALE VAUDOISE. (Davis, Megan) (Entered: 12/04/2012)
12/04/2012		Receipt of Motion to Withdraw the Reference (fee)(12-01694-brl) [motion,205] (176.00) Filing Fee. Receipt number 9029958. Fee amount 176.00. (U.S. Treasury) (Entered: 12/04/2012)
12/04/2012	6 (11 pgs)	Memorandum of Law *in Support of the Motion of Defendant Banque Cantonale Vaudoise to Withdraw the Reference* (related document(s)5) filed by Megan P. Davis on behalf of BANQUE CANTONALE VAUDOISE. (Davis, Megan) (Entered: 12/04/2012)
12/04/2012	7 (16 pgs; 2 docs)	Declaration *of John F. Zulack in Support of the Motion of Defendant Banque Cantonale Vaudoise to Withdraw the Reference* (related document(s)5) filed by Megan P. Davis on behalf of BANQUE CANTONALE VAUDOISE. (Attachments: # 1 Exhibit Exhibit A to Zulack Decl.) (Davis, Megan) (Entered: 12/04/2012)
12/05/2012	8 (2 pgs)	Civil Cover Sheet from U.S. District Court, Case Number: 1208816 (related document(s)5) filed by Clerk's Office of the United States Bankruptcy Court. (Rouzeau, Anatin) (Entered: 12/05/2012)
01/10/2013	9 (3 pgs)	Stipulation *Extending Time to Respond and Adjourning the Pre-Trial Conference Rescheduled to May 29, 2013 at 10:00 a.m.* filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 01/10/2013)
04/08/2013	10 (3 pgs)	Stipulation *Extending Time to Respond and Adjourning the Pre-Trial Conference* filed by

		David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 04/08/2013)
06/04/2013	11 (3 pgs)	Stipulation *Extending Time to Respond and Adjourning the Pre-Trial Conference* filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 06/04/2013)
08/16/2013	12 (3 pgs)	Stipulation *Extending Time to November 22, 2013 and Adjourning the Pre-Trial Conference to February 26, 2014* filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 08/16/2013)
10/28/2013	13 (3 pgs)	Stipulation *Extending Time to Respond and Adjourning the Pre-Trial Conference* filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 10/28/2013)
01/07/2014	14 (3 pgs)	Stipulation *Extending Time to Respond and Adjourning the Pre-Trial Conference* filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 01/07/2014)
01/14/2014	15 (1 pg)	Notice of Case Reassignment From Judge Burton R. Lifland to Judge Stuart M. Bernstein. (Bush, Brent). (Entered: 01/16/2014)
03/03/2014	16 (3 pgs)	Stipulation *Extending Time to Respond to April 30, 2014 and Adjourning the Pre-Trial Conference to July 30, 2014* filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 03/03/2014)
04/07/2014	17 (3 pgs)	Stipulation *Extending Time to Respond and Adjourning the Pre-Trial Conference (Banque*

		Cantonale Vaudoise filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 04/07/2014)
06/10/2014	18 (3 pgs)	Stipulation *Extending Time to Respond and Adjourning the Pre-Trial Conference to September 17, 2014 at 10:00 a.m.* filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 06/10/2014)
06/18/2014	19 (2 pgs)	Notice of Withdrawal *Request for Removal from ECF Service List* filed by Megan P. Davis on behalf of BANQUE CANTONALE VAUDOISE. (Davis, Megan) (Entered: 06/18/2014)
06/30/2014	20 (3 pgs)	Stipulation *Extending Time to Respond to August 29, 2014 and Adjourning the Pre-Trial Conference to October 22, 2014* filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 06/30/2014)
07/31/2014	21	Motion to Withdraw the Reference Returned to Bankruptcy Court, See Case No. 08-1789 Doc #7546 (White, Greg) (Entered: 07/31/2014)
08/18/2014	22 (3 pgs)	Stipulation *Extending Time to Respond to October 30, 2014 and Adjourning the Pre-Trial Conference to January 28, 2015* filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Long, Thomas) (Entered: 08/18/2014)
08/28/2014	23 (12 pgs; 4 docs)	Motion to Allow- *Notice of Motion for Leave to Replead Pursuant to Fed. R. Civ. P. 15(a) and Court Order Authorizing Limited Discovery Pursuant to Fed. R. Civ. P. 26(d)(1)* filed by Oren Warshavsky on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC with hearing to be held on 10/22/2014 at 10:00 AM at Courtroom 723 (SMB) Objections due by 10/10/2014,.

		(Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) (Warshavsky, Oren) (Entered: 08/28/2014)
08/28/2014	24 (38 pgs; 2 docs)	Memorandum of Law - *Trustee's Memorandum of Law in Support of Omnibus Motion for Leave to Replead Pursuant to Fed. R. Civ. P. 15(a) and Court Order Authorizing Limited Discovery Pursuant to Fed. R. Civ. P. 26(d)(1)* (related document(s)23) filed by Oren Warshavsky on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Attachments: # 1 Exhibit 1) (Warshavsky, Oren) (Entered: 08/28/2014)
08/28/2014	25 (95 pgs; 7 docs)	Declaration *of Regina Griffin in Support of the Trustee's Omnibus Motion for Leave to Replead Pursuant to Fed. R. Civ. P. 15(a) and Court Order Authorizing Limited Discovery Pursuant to Fed. R. Civ. P. 26(d)(1)* (related document(s)23, 24) filed by Oren Warshavsky on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Attachments: # 1 Exhibit 1 # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C # 5 Exhibit D # 6 Exhibit E) (Warshavsky, Oren) (Entered: 08/28/2014)
09/02/2014	26 (30 pgs)	Affidavit of Service (related document(s)23, 24, 25) filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 09/02/2014)
10/02/2014	27 (2 pgs)	Letter - *October 2, 2014 Letter to Judge Bernstein regarding Trustee's Omnibus Motion for Leave to Replead and Defendants' Request for Further Proceedings on Extraterritoriality Motion* (related document(s)23) filed by Oren Warshavsky on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Warshavsky, Oren) (Entered: 10/02/2014)
10/08/2014	28 (55 pgs)	Affidavit of Service (related document(s)27) filed by Oren Warshavsky on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Warshavsky, Oren) (Entered: 10/08/2014)

10/21/2014	29 (4 pgs)	Notice of Adjournment of Hearing *on Trustee's Omnibus Motion for Leave to Replead and for Limited Discovery* filed by Regina Griffin on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Griffin, Regina) (Entered: 10/21/2014)
10/22/2014	30 (54 pgs)	Affidavit of Service (related document(s)29) filed by Regina Griffin on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Griffin, Regina) (Entered: 10/22/2014)
10/23/2014	31 (58 pgs; 2 docs)	Notice of Presentment *of Order Concerning Further Proceedings on Extraterritoriality Motion and Trustee's Omnibus Motion for Leave to Replead and for Limited Discovery and Opportunity for Hearing* filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Attachments: # 1 Exhibit A) (Sheehan, David) (Entered: 10/23/2014)
10/24/2014	32 (39 pgs)	Affidavit of Service (related document(s)31) filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 10/24/2014)
10/27/2014	33 (3 pgs)	Stipulation *Extending Time to Respond to December 19, 2014* filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 10/27/2014)
11/07/2014	34 (6 pgs)	Notice of Hearing *on Order Concerning Further Proceedings on Extraterritoriality Motion and Trustee's Omnibus Motion for Leave to Replead and for Limited Discovery and Opportunity for Hearing* (related document(s)31) filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. with hearing to be held on 11/19/2014 at 10:00 AM at Courtroom 723 (SMB) (Sheehan, David) (Entered: 11/07/2014)

11/10/2014	35 (39 pgs)	Affidavit of Service (related document(s)34) filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 11/10/2014)
11/12/2014	36 (13 pgs)	Response / *Trustee's Response to Limited Objections to Proposed Order Concerning Further Proceedings on Extraterritoriality Motion and Trustees Omnibus Motion for Leave to Replead and for Limited Discovery* (related document(s)31) filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. with hearing to be held on 11/19/2014 at 10:00 AM at Courtroom 723 (SMB) (Sheehan, David) (Entered: 11/12/2014)
11/13/2014	37 (40 pgs)	Affidavit of Service *of Trustee's Response to Limited Objections to Proposed Order Concerning Further Proceedings on Extraterritoriality Motion and Trustee's Omnibus Motion for Leave to Replead and for Limited Discovery* (related document(s)36) filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 11/13/2014)
11/18/2014	38 (80 pgs; 2 docs)	Statement / *Trustee's Statement regarding Amendments to Exhibits to Proposed Order Concerning Further Proceedings on Extraterritoriality Motion and Trustee's Omnibus Motion for Leave to Replead and for Limited Discovery* (related document(s)31) filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. with hearing to be held on 11/19/2014 at 10:00 AM at Courtroom 723 (SMB) (Attachments: # 1 Exhibit 1-4) (Sheehan, David) (Entered: 11/18/2014)
11/19/2014	39 (39 pgs)	Affidavit of Service (related document(s)38) filed by Regina Griffin on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Griffin, Regina) (Entered: 11/19/2014)

12/02/2014	40 (71 pgs; 3 docs)	Notice of Presentment *of Order Concerning Further Proceedings on Extraterritoriality Motion and Trustee's Omnibus Motion for Leave to Replead and for Limited Discovery and Opportunity for Hearing* (related document(s)31) filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. with presentment to be held on 12/10/2014 at 12:00 PM at Courtroom 723 (SMB) Objections due by 12/5/2014, (Attachments: # 1 Exhibit A # 2 Exhibit B)(Sheehan, David) (Entered: 12/02/2014)
12/05/2014	41 (13 pgs)	Affidavit of Service (related document(s)40) Filed by Regina Griffin on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Griffin, Regina) (Entered: 12/05/2014)
12/18/2014	42 (52 pgs)	So Ordered Order Signed On 12/10/2014, Re: Concerning Further Proceedings On Extraterritoriality Motion And Trustees Omnibus Motion For Leave To Replead And For Limited Discovery (Richards, Beverly). (Entered: 12/18/2014)
01/05/2015	43 (43 pgs)	Supplemental Memorandum of Law *Consolidated Supplemental Memorandum of Law in Support of the Transferee Defendants' Motion to Dismiss Based on Extraterritoriality* filed by Elizabeth A O'Connor on behalf of BANQUE CANTONALE VAUDOISE. (O'Connor, Elizabeth) (Entered: 01/05/2015)
01/15/2015	44 (2 pgs)	Notice of Adjournment of Hearing */Pre-Trial Conference* filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. with hearing to be held on 7/29/2015 at 10:00 AM at Courtroom 723 (SMB) (Long, Thomas) (Entered: 01/15/2015)
01/28/2015	45 (3 pgs)	Affidavit of Service (related document(s)44) Filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Long, Thomas) (Entered: 01/28/2015)

03/04/2015	46 (6 pgs)	Letter *Regarding Confidentiality Designations Affecting The Trustee's Extraterritoriality Submission* Filed by Regina Griffin on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Griffin, Regina) (Entered: 03/04/2015)
03/06/2015	47 (27 pgs)	Affidavit of Service (related document(s)46) Filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 03/06/2015)
03/10/2015	48 (2 pgs)	Notice of Hearing */Notice of Conference On Trustee's Letter Regarding Confidentiality Designations Affecting the Trustee's Extraterritoriality Submission* (related document (s)46) filed by Karin Scholz Jenson on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. with hearing to be held on 3/18/2015 at 02:00 PM at Courtroom 723 (SMB) (Scholz Jenson, Karin) (Entered: 03/10/2015)
03/13/2015	49 (27 pgs)	Affidavit of Service (related document(s)48) Filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 03/13/2015)
03/17/2015	50 (3 pgs)	Letter */Trustee's Supplemental Letter Regarding Confidentiality Designations Affecting The Trustees Extraterritoriality Submission* (related document(s)46) Filed by Karin Scholz Jenson on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Scholz Jenson, Karin) (Entered: 03/17/2015)
03/20/2015	51 (25 pgs)	Affidavit of Service (related document(s)50) Filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 03/20/2015)
06/27/2015	52 (63 pgs; 3 docs)	Opposition Brief */Trustee's Memorandum of Law in Opposition to the Transferee Defendants' Motion to Dismiss Based on Extraterritoriality*

		and in Further Support of Trustee's Motion for Leave to Amend Complaints (related document(s) 23) filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2) (Sheehan, David) (Entered: 06/27/2015)
06/27/2015	53 (6 pgs)	Response */Addendum to the Trustee's Opposition on the Extraterritoriality Issue Banque Cantonale Vaudoise* (related document(s)52) filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 06/27/2015)
06/27/2015	54 (13 pgs)	Statement */Trustee's Proffered Allegations Pertaining to the Extraterritoriality Issue as to Banque Cantonale Vaudoise* (related document(s) 52) filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 06/27/2015)
06/30/2015	55 (3 pgs)	Affidavit of Service (related document(s)53, 54, 52) Filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Sheehan, David) (Entered: 06/30/2015)
07/17/2015	56 (2 pgs)	Notice of Adjournment of Hearing */Pre-Trial Conference* filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. with hearing to be held on 3/30/2016 at 10:00 AM at Courtroom 723 (SMB) (Long, Thomas) (Entered: 07/17/2015)
07/17/2015	57 (3 pgs)	Affidavit of Service *(Notice of Adjournment of the Pre-Trial Conference)* (related document(s)56) Filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Long, Thomas) (Entered: 07/17/2015)
09/30/2015	58 (6 pgs)	Supplemental Reply to Motion *Banque Cantonale Vaudoise's Supplemental Reply Memorandum Of Law In Further Support Of Its Motion To Dismiss*

		Based On Extraterritoriality And In Opposition To The Trustee's Motion For Leave To Amend His Complaint filed by John F. Zulack on behalf of BANQUE CANTONALE VAUDOISE. (Zulack, John) (Entered: 09/30/2015)
09/30/2015	59 (62 pgs)	Supplemental Reply to Motion *Reply Consolidated Supplemental Memorandum of Law in Support of Transferee Defendants' Motion to Dismiss Based on Extraterritoriality* filed by John F. Zulack on behalf of BANQUE CANTONALE VAUDOISE. (Zulack, John) (Entered: 09/30/2015)
11/20/2015	60 (6 pgs; 2 docs)	Notice of Hearing *on Defendants' Motion to Dismiss Based on Extraterritoriality and Trustee's Omnibus Motion For Leave to Replead* filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. with hearing to be held on 12/16/2015 (check with court for location) (Attachments: # 1 Exhibit 1)(Long, Thomas) (Entered: 11/20/2015)
11/20/2015	61 (20 pgs)	Affidavit of Service *of Notice of Hearing on Defendants' Motion to Dismiss Based on Extraterritoriality and Trustee's Omnibus Motion For Leave to Replead* (related document(s)60) Filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Long, Thomas) (Entered: 11/20/2015)
03/14/2016	62 (2 pgs)	Notice of Adjournment of Hearing - *Notice of Adjournment of the Pre-Trial Conference* filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. with hearing to be held on 5/25/2016 at 10:00 AM at Courtroom 723 (SMB) (Long, Thomas) (Entered: 03/14/2016)
05/06/2016	63 (2 pgs)	Notice of Adjournment of Hearing */Notice of Adjournment of the Pre-Trial Conference* filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. with hearing to be held on 7/27/2016 at 10:00 AM at Courtroom 723 (SMB) (Long, Thomas) (Entered: 05/06/2016)

05/06/2016	64 (3 pgs)	Affidavit of Service *of the Notice of Adjournment of the Pre-Trial Conference* (related document(s) 63) Filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Long, Thomas) (Entered: 05/06/2016)
07/12/2016	65 (2 pgs)	Notice of Adjournment of Hearing */Notice of Adjournment of the Pre-Trial Conference* filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. with hearing to be held on 9/28/2016 at 10:00 AM at Courtroom 723 (SMB) (Long, Thomas) (Entered: 07/12/2016)
07/12/2016	66 (3 pgs)	Affidavit of Service *of the Notice of Adjournment of the Pre-Trial Conference* (related document(s) 65) Filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Long, Thomas) (Entered: 07/12/2016)
09/16/2016	67 (2 pgs)	Notice of Adjournment of Hearing */Notice of Adjournment of the Pre-Trial Conference* filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. with hearing to be held on 12/21/2016 at 10:00 AM at Courtroom 723 (SMB) (Long, Thomas) (Entered: 09/16/2016)
09/16/2016	68 (3 pgs)	Affidavit of Service *of the Notice of Adjournment of the Pre-Trial Conference* (related document(s) 67) Filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Long, Thomas) (Entered: 09/16/2016)
12/14/2016	69 (2 pgs)	Notice of Adjournment of Hearing */Notice of Adjournment of the Pre-Trial Conference* filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. with hearing to be held on 3/29/2017 at 10:00 AM at Courtroom 723 (SMB) (Long, Thomas) (Entered: 12/14/2016)
12/20/2016	70 (3 pgs)	Affidavit of Service *of the Notice of Adjournment of the Pre-Trial Conference* (related document(s)

		69) Filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Long, Thomas) (Entered: 12/20/2016)
03/03/2017	71 (98 pgs; 2 docs)	So Ordered Stipulation Signed On 3/3/2017. Re: Final Order Granting Motion To Dismiss Complaint (Barrett, Chantel) **(Modified on 3/13/2017 to Add Exhibit A)** (Gomez, Jessica). (Entered: 03/06/2017)
03/07/2017		Adversary Case 1:12-ap-1694 Closed. This Adversary Proceeding is Closed Subject to the Filing of a Notice of Appeal Within Fourteen (14) Days of the Entry of the Order Terminating this Adversary Proceeding. (White, Greg) (Entered: 03/07/2017)
03/16/2017	72 (189 pgs; 5 docs)	Notice of Appeal (related document(s)71) filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. Appellant Designation due by 3/30/2017, (Attachments: # 1 Exhibit 1- Final Judgement of Bankruptcy Court # 2 Exhibit 2- 7/6/2014 Opinion and Order of District Court # 3 Exhibit 3- 5/11/2013 Order of District Court # 4 Exhibit 4- 6/6/2012 Order of District Court)(Long, Thomas) (Entered: 03/16/2017)
03/17/2017	73 (3 pgs)	Affidavit of Service (related document(s)72) Filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Long, Thomas) (Entered: 03/17/2017)
03/20/2017		Receipt of Notice of Appeal(12-01694-smb) [appeal,97] (298.00) Filing Fee. Receipt number 11763492. Fee amount 298.00. (Re: Doc # 72) (U.S. Treasury) (Entered: 03/20/2017)
03/28/2017	74 (793 pgs; 30 docs)	Designation of Contents (appellant). (related document(s)72) filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Attachments: # 1 Appendix A # 2 Appendix B # 3 Appendix C # 4 Exhibit 1 # 5 Exhibit 2 # 6 Exhibit 3 # 7 Exhibit 4 # 8 Exhibit 5 # 9 Exhibit 6 # 10 Exhibit 7 # 11 Exhibit 8 # 12

		Exhibit 9 # 13 Exhibit 10 # 14 Exhibit 11 # 15 Exhibit 12 # 16 Exhibit 13 # 17 Exhibit 14 # 18 Exhibit 15 # 19 Exhibit 16 # 20 Exhibit 17 # 21 Exhibit 18 # 22 Exhibit 19 # 23 Exhibit 20 # 24 Exhibit 21 # 25 Exhibit 22 # 26 Exhibit 23 # 27 Exhibit 24 # 28 Exhibit 25 # 29 Exhibit 26)(Long, Thomas) (Entered: 03/28/2017)
03/28/2017	75 (3 pgs)	Affidavit of Service *of the Designation of Contents (appellant)* (related document(s)74) Filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Long, Thomas) (Entered: 03/28/2017)
04/04/2017	76 (2 pgs)	Certification of Direct Appeal to Court of Appeals (related document(s)72) filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Long, Thomas) (Entered: 04/04/2017)
04/04/2017	77 (3 pgs)	Affidavit of Service *of the Certification of Direct Appeal to Court of Appeals* (related document(s) 76) Filed by Thomas L. Long on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Long, Thomas) (Entered: 04/04/2017)

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Billable Pages:	9	**Cost:**	0.90

Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Petition of Appellant Irving H. Picard For Permission to Appeal Pursuant to 27 U.S.C. § 158(d)(2)(A) to be served on Counsel for Respondent via Electronic Mail to:

John F. Zulack
FLEMMING ZULACK WILLIAMSON
ZAUDERER LLP
One Liberty Plaza
New York, New York 10006
Telephone: (212) 412-9500
Email: jzulack@fzwz.com

I also certify that an electronic copy was mailed to the Court's email address (newcases@ca2.uscourts.gov). Three hard copies of the Petition of Appellant Irving H. Picard For Permission to Appeal Pursuant to 27 U.S.C. § 158(d)(2)(A) were sent to the Clerk's Office by hand delivery to:

Clerk of Court
United States Court of Appeals, Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007
(212) 857-8500

On this 28th day of April 2017.

/s/ David J. Sheehan

David J. Sheehan
BAKER & HOSTETLER LLP