

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

SECURITIES INVESTOR PROTECTION CORPORATION,  PLAINTIFF,  V.  BERNARD L. MADOFF INVESTMENT SECURITIES LLC,  DEFENDANT.	ADV. PRO. NO. 08-01789 (LGB)  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.  CACEIS BANK LUXEMBOURG AND CACEIS BANK,  DEFENDANTS.	ADV. PRO. NO. 11-02758 (LGB)

**CASE MANAGEMENT PLAN**

Plaintiff Irving H. Picard, as trustee (the “Trustee”) for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–III, and the chapter 7 estate of Bernard L. Madoff individually, and defendants CACEIS Bank Luxembourg, n/k/a/ CACEIS Bank Luxembourg Branch (“CACEIS Bank Lux”) and CACEIS Bank (“CACEIS Bank France”) (together, with CACEIS Bank Lux, the “CACEIS Defendants,” and together with the Trustee, the “Parties” and each

individually, a “Party”), by and through their respective undersigned counsel, hereby submit the following Case Management Plan pursuant to Rules 16 and 26 of the Federal Rules of Civil Procedure (the “Federal Rules”), applicable under Rules 7016 and 7026 of the Federal Rules of Bankruptcy Procedure (the “Federal Bankruptcy Rules”).

1. Relevant Procedural History.

a. On October 6, 2011, 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 (the “Complaint”) against the CACEIS Defendants. *Picard v. CACEIS Bank Luxembourg and CACEIS Bank*, Adv. Pro. No. 11-02758 (LGB) (Bankr. S.D.N.Y. Oct. 6, 2011). *See* ECF No. 1.<sup>1</sup>

b. On June 30, 2023, the Trustee filed an amended complaint (the “Amended Complaint”) against the CACEIS Defendants. *See* ECF No. 131.

c. On September 13, 2023, the CACEIS Defendants filed a motion to dismiss the Amended Complaint (the “Motion to Dismiss”), and a corresponding memorandum of law. *See* ECF Nos. 134 and 135, respectively. The Trustee filed a memorandum of law in opposition to the Motion to Dismiss on November 15, 2023, and the CACEIS Defendants filed a reply on December 13, 2023 (the “Reply”). *See* ECF Nos. 140 and 142, respectively.

d. On February 1, 2024, the Parties agreed to waive oral argument on the Motion to Dismiss and rely upon their paper submissions. *See* ECF No. 143.

e. On February 26, 2024, the Bankruptcy Court issued its Memorandum Decision Denying the CACEIS Defendants’ Motion to Dismiss. *See* ECF No. 147, revised on February 28, 2024, by ECF No. 151. The Bankruptcy Court entered its Order Denying the Motion

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<sup>1</sup> Unless otherwise specified, all “ECF No. \_\_\_” citations refer to Adv. Pro. No. 11-02758.

to Dismiss on March 6, 2024, which also set the CACEIS Defendants' answer deadline as March 27, 2024. *See* ECF No. 152.

f. On March 26, 2024, the Parties stipulated to extend the deadline by which the CACEIS Defendants were required to file an answer to the Trustee's Amended Complaint, setting the revised answer deadline to April 10, 2024. *See* ECF No. 158. The CACEIS Defendants filed an answer to the Trustee's Amended Complaint on April 10, 2024. *See* ECF No. 161.

2. Fact Discovery Plan.

a. Fact Discovery Cut-Off. Unless ordered by the Bankruptcy Court, all fact discovery is to be completed by September 15, 2026 (the "Fact Discovery Cut-Off Date").

b. Initial Disclosures. The Parties do not propose any changes in initial disclosures required under Federal Rule 26(a)(1)(A) (the "Initial Disclosures"). The Parties agree that they shall serve such Initial Disclosures as required under Federal Rule 26 on or before 90 days after this Case Management Plan is entered as an order of the Court.

c. Subjects on Which Discovery May Be Needed. The Parties contemplate that fact and expert discovery will be needed on asserted claims and defenses.

d. Foreign Discovery. The Trustee anticipates the need for discovery located outside of the United States, including from individuals and entities that may have been affiliated with either or both of the CACEIS Defendants. To obtain discovery from these individuals and entities, the Trustee will comply with the relevant rules of the applicable jurisdiction(s), the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, and/or any other internationally recognized means of obtaining cross-border discovery, including letters rogatory (collectively, "International Discovery"). To the extent the Parties avail themselves of International Discovery procedures, the Parties will not be deemed to have waived, prejudiced, or

otherwise altered their rights to conduct discovery under the Federal Rules, the Federal Bankruptcy Rules, the Local Bankruptcy Rules for the Southern District of New York (the “Local Bankruptcy Rules”), or other applicable domestic rules with all Parties’ rights and defenses with respect to any such discovery expressly preserved. To the extent that responses sought, or the occurrence of depositions/examinations requested pursuant to timely requested International Discovery are not received or do not occur by the Fact Discovery Cut-Off Date, the Parties may individually or jointly seek reasonable extensions of the deadlines set forth herein without prejudice to the rights of any Party to oppose such a request made by an adverse party. The Parties reserve all rights and do not waive any arguments as to how discovery should be conducted.

e. Redaction Protocol. The CACEIS Defendants are subject to the laws of foreign jurisdictions (in particular, banking secrecy and data privacy laws), various provisions of which may limit or prohibit unilateral disclosure of certain information in discovery that otherwise may be discoverable under U.S. law. As such, the CACEIS Defendants maintain that, to avoid potentially resolvable clashes of U.S. and foreign law, the Parties should agree to a redaction protocol. The Trustee maintains that the Federal Rules provide a sufficient mechanism for addressing discovery disputes in this proceeding and that entry into a redaction protocol is premature in that it assumes such redactions are appropriate without any context under which to address such questions.

f. Form of Certain Discovery. The Trustee intends to utilize one or more electronic data rooms to affirmatively make available millions of documents related to the Trustee’s claims. The Trustee’s use of such data rooms will be governed by all applicable rules (including the Federal Rules, Federal Bankruptcy Rules, and Local Bankruptcy Rules), and all applicable orders, including the Litigation Protective Order (the “LPO”), *Sec. Inv. Prot. Corp. v.*

*Bernard L. Madoff Inv. Sec. LLC*, Adv. Pro. No. 08-01789 (LGB) (Bankr. S.D.N.Y. June 6, 2011) (ECF No. 4137), the Order Modifying the LPO, *id.* (ECF No. 5474), the Order Establishing Procedures for Third-Party Data Rooms, *id.* (ECF No. 5475-1), the Order Establishing Litigation Case Management Procedures for Avoidance Actions and Amending the February 16, 2010 Protective Order, *id.* (ECF No. 3141), and the Order Establishing Expanded Access to Electronic Data Room 1, *id.* (ECF No. 4624). The CACEIS Defendants reserve all rights relating to the documents in electronic data rooms.

g. Document Requests. The Parties may serve requests for documents on or before 60 days of the Fact Discovery Cut-Off Date.

h. Interrogatories. The Parties may serve Interrogatories in accordance with the rules and limitations articulated in Local Bankruptcy Rule 7033-1 on or before 60 days of the Fact Discovery Cut-Off Date.

i. Requests for Admission. The Parties may serve Requests for Admission on or before 60 days of the Fact Discovery Cut-Off Date. The Parties may serve Requests for Admissions relating to the authentication and admissibility of documents at any time before the Fact Discovery Cut-Off Date.

j. Limitations on Discovery. Limitations on written discovery will be governed by the Federal Rules made applicable to this adversary proceeding by the Federal Bankruptcy Rules, and the Local Bankruptcy Rules. The Parties may agree on certain limitations on discovery or may file an application with the Bankruptcy Court for good cause.

k. Inadvertent Production of Privileged Materials. The Parties acknowledge that the inadvertent production of privileged or work product protected documents is not a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding.

This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d). Nothing contained in this paragraph is intended to or shall serve to limit a Party's right to conduct a review of documents, including electronically stored information, for relevance, responsiveness, privileged and/or protected status.

1. Depositions. All depositions of fact witnesses must be completed by the Fact Discovery Cut-Off Date. Depositions shall proceed concurrently, with no Party having priority. The Parties will endeavor to conclude the depositions within the seven (7) hours provided by Federal Rule 30(d)(1), although the Parties acknowledge that certain depositions of fact witnesses with knowledge of issues common to more than one Avoidance Actions (as defined below) may not be concluded within this time limit. For any such fact witnesses, the Parties will attempt in good faith to agree to reasonable extensions of the seven (7) hour time limit as appropriate, and failing agreement, any Party may apply to the Court for an extension of this time limit.

To the extent the deposition of any fact witness in the above-captioned matter raises common issues relevant to more than one avoidance action related to the above-captioned case (Adv. Pro. No. 08-01789 (LGB)), (together, the "Avoidance Action(s)"), in which fact discovery has not closed, the Parties shall make a good faith effort to coordinate such depositions with the witness and defendants (or their respective counsel, as appropriate) in such Avoidance Actions to maximize efficiency and use of resources to the extent reasonably practicable. The Parties shall confer in good faith and provide notice of such depositions under the Federal Rules, including the date, time, and location of any such depositions, to all relevant parties.

In a coordinated deposition, the limitations set forth in Federal Rule 30(d)(1) shall not necessarily apply, and the Parties shall attempt in good faith to agree on an appropriate duration

for the deposition. Such depositions shall not prejudice or preclude the Trustee from additional depositions of such witness in Avoidance Actions in which initial disclosures have not been made and discovery is not open.

The Parties agree that they will work in good faith to identify the requisite number of each Party's deponents and depositions. Depositions of Irving H. Picard himself are prohibited absent an order issued by this Court upon a showing of good cause.

The Parties agree that they will work in good faith to agree on the appropriate date, time and location for each expert deposition.

Nothing contained in this Case Management Plan shall be deemed or construed to be a waiver of any Party's right to object to the taking of the deposition of a particular witness, or abridge, limit, or modify any rights that a foreign witness has under the applicable law of the relevant foreign jurisdiction.

3. Expert Discovery Plan. Within 30 days after the Fact Discovery Cut-Off Date, the Parties agree to meet and confer in good faith on the need for and timing of expert discovery. The Parties further agree to submit a proposed Amended Case Management Plan that addresses expert discovery in this action after the Fact Discovery Cut-Off Date.

4. Manner of Production of Discovery Materials. The Parties may produce discovery, including initial disclosures, on a CD-ROM, flash drive, portable hard drive, secure or encrypted file transfer, in an electronic data room, or other similar electronic format. Given the volume of documentation that may be subject to disclosure in this matter, the Parties may produce a summary report, such as an expert report, and provide access to the underlying documentation on which the expert report or other summary report relies in an electronic data room or other medium for review

by the Parties. Information and documents produced or made available electronically shall, to the extent reasonable and practicable:

- (i) be text searchable;
- (ii) provide data and image load files necessary to review the documents on search platforms (*e.g.*, Summation, Concordance, Relativity) upon request of either Party;
- (iii) provide any system-created or non-privileged captured objective metadata, such as date fields, author fields, custodian fields, path to native file, etc.;
- (iv) be organized, such as by date, custodian, or subject matter, as maintained in the ordinary course of business or, in the case of documents contained in E-Data Room 1 or the Third-Party Data Rooms, as organized by the Trustee; and
- (v) provide additional formats of production, metadata, or native documents agreed or reasonably requested by the Parties prior to the making of their respective productions, or, to the extent reasonably requested after a production has already been made (in compliance with the above), to the extent reasonable and not unduly burdensome.

The Parties shall meet and confer first in a good faith attempt to resolve any dispute regarding the manner, process, or format of production of any discovery materials, including to the extent the CACEIS Defendants determine they are unable to comply with the foregoing requirements based on the age and condition of the electronically stored information, the systems on which such information was created, stored and/or maintained, or otherwise. If the Parties cannot resolve any such dispute consensually, the Parties shall comply with Local Bankruptcy Rule 7007-1 to resolve the dispute.

5. Confidentiality. The LPO (*Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Sec., LLC (In re Bernard L. Madoff Inv. Sec., LLC)*, Adv. Pro. No. 08-01789 (LGB) (Bankr. S.D.N.Y. June 6, 2011) (ECF No. 4137), as modified, *id.* (ECF No. 5474), shall govern the disclosure of



confidential information in this proceeding, including any subsequent modifications to the LPO or any other orders governing confidentiality that are ordered by the Bankruptcy Court.

6. Proposed Modifications of Standard Pretrial Proceedings Due to the Special Nature of the Action. The Parties do not presently believe that any such modifications are appropriate or necessary. The Parties will contact the Court if their belief in this regard changes.

7. Prospects for Settlement, Including Whether a Settlement Conference Should Be Scheduled. The Parties believe that it is premature to schedule a settlement conference with the Court at this time.

8. Discovery Arbitrator. The Parties may agree to the use of a discovery arbitrator to resolve discovery disputes that the Parties are unable to resolve by meeting and conferring, including as referenced in the Order Appointing a Discovery Arbitrator Pursuant to Bankruptcy Rule 9019(c) and General Order M-390, *Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, Adv. Pro. No. 08-01789 (LGB) (Bankr. S.D.N.Y. Oct. 4, 2016) (ECF No. 14227), provided however, notwithstanding any provision to the contrary in the Order Appointing a Discovery Arbitrator Pursuant to Bankruptcy Rule 9091(c) and General Order M-390, the Parties agree to split all arbitration fees and expenses equally.

9. Summary Judgment and Trial. The Parties propose that they will confer with each other and the Court at the conclusion of all discovery to schedule motions for summary judgment, if any, and a final pretrial conference and trial date. This section is without prejudice to the right of any Party to seek leave to file a motion for summary judgment as to any claim or defense, or any part of any claim or defense, prior to the conclusion of discovery, as provided by Federal Rule 56.

[Signature page follows]

Dated: September 25, 2024  
New York, New York

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SIPA Liquidation of Bernard L. Madoff  
Investment Securities LLC and the Estate of  
Bernard L. Madoff*

**SO ORDERED.**

DATED: September 26, 2024  
New York, New York

/s/ Lisa G. Beckerman  
UNITED STATES BANKRUPTCY JUDGE  
SOUTHERN DISTRICT OF NEW YORK