UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, *Plaintiff-Applicant*, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, *Defendant*.	Adv. Proc. No. 08-01789 (SMB) SIPA LIQUIDATION (Substantively Consolidated)
In re BERNARD L. MADOFF, *Debtor*.	
IRVING H. PICARD, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Estate of Bernard L. Madoff, *Plaintiff*, v. SQUARE ONE FUND LTD., *Defendant*.	Adv. Proc. No. 10-04330 (SMB)

DEFENDANT'S MOTION AND NOTICE OF MOTION TO DISMISS

Based upon the Memorandum of Law in Support of Square One Fund Ltd.'s Motion to Dismiss and all prior pleadings and proceedings in this adversary proceeding, Square One Fund Ltd. ("**Square One**") moves for an order under Rule 12(b)(6) dismissing the Trustee's claims with prejudice. The hearing on the Motion will be held before this Court at the

Alexander Hamilton Customs House, Courtroom 723, One Bowling Green, New York, New York, on a date selected by the Court.

Under the parties' agreement and the Stipulation and Order Allowing Trustee to File Amended Complaint entered on November 21, 2018 (ECF No. 166), the Trustee's response is due by April 1, 2019, and Square One's reply is due by April 30, 2019. A pretrial conference has been scheduled in this matter for May 29, 2019.

Dated: New York, New York
February 14, 2019

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MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

Defendant Square One Fund Limited ("**Square One**") respectfully submits this memorandum of law in support of its motion to dismiss with prejudice, under Federal Rule of Civil Procedure 12(b)(6), as incorporated in this proceeding by Federal Rule of Bankruptcy Procedure 7012, the Amended Complaint filed by plaintiff Trustee Irving Picard.

INTRODUCTION

The Trustee filed his complaint against Square One in August 2010 seeking to avoid and recover Square One's withdrawals from its investment account at the stockbroker debtor Bernard L. Madoff Investment Securities LLC ("**BLMIS**"). Following several decisions of the Court of Appeals, the District Court, and this Court imposing materially higher substantive and pleading requirements on a SIPA trustee to avoid transfers from a stockbroker in a SIPA proceeding, the Trustee filed an Amended Complaint in December 2018 adding numerous additional facts and seeking additional remedies. However, because the Amended Complaint still does not meet the substantive and pleading requirements to avoid and recover transfers from a stockbroker debtor, Square One moves to dismiss the Amended Complaint for failure to state a claim on which this Court may grant relief.

FACTS

The following allegations are drawn from the Amended Complaint. Square One accepts the allegations as true solely for the purpose of this Motion to Dismiss and reserves the right to dispute the allegations if the Court does not dismiss the Amended Complaint.

I. Square One, Estenne, and the Transfers

Square One is a British Virgin Islands company that was formed in 1998. Am. Compl. ¶¶ 3, 63. Since its formation, Square One has been managed by Luc Estenne, a Belgian national and non-defendant in this action. *Id.* ¶ 4. All of the allegations against Square One are based on Estenne's conduct.

Following its formation, Square One invested in BLMIS through an investment account, Account No. 1FR048 ("the **IA Account**"), from which it received all of the transfers ("the **Transfers**") at issue here. *Id.* ¶ 65; Am. Compl., Ex. A at 1. Square One opened the IA Account by executing three account opening agreements with BLMIS: a "Customer Agreement," "Option Agreement," and "Trading Authorization Limited to Purchases and Sales of Securities and Options." Am. Compl. ¶ 69. Between 1999 and 2008, Square One deposited $28,097,165 in the IA Account and withdrew $25,852,737, ultimately losing $2,244,428 on its investments. *See* Am. Compl., Ex. B at 20. The withdrawals included $24,271,620 withdrawn in the six years before the Filing Date (the "**Six-Year Transfers**") and $6,410,000 withdrawn in the two years before the Filing Date (the "**Two-Year Transfers**"). Am. Compl. ¶¶ 185, 187; *see also* Am. Compl., Ex. B at 20.

Estenne managed Square One through investment manager Square Asset Management ("**SAM**"), which Estenne also founded. Am. Compl. ¶ 73. Through SAM, Estenne charged Square One's investors management fees. *Id.* ¶ 73.

The Amended Complaint alleges Estenne is a "sophisticated investment professional," *id.* ¶ 79, with experience in investment fund management. *See id.* ¶¶ 79-96. Estenne also founded and served as the CEO of Partners Advisers, a Geneva-based investment advisory firm. *Id.* ¶ 80. Through his work with Square One and Partners Advisers, Estenne developed experience in investment management, leading to speaking engagements on industry panels and published writings on related topics. *See, e.g.*, *id.* ¶¶ 82-84. Through Partners Advisers, Estenne provided customers with the opportunity to make investments in the ART Fund, in which Estenne also personally invested. *Id.* ¶ 89.

II. Square One's Proof of Claim and The Trustee's Complaint

Square One initially submitted a customer claim in this SIPA proceeding but voluntarily withdrew it in August 2010.[1] The Trustee brought this adversary proceeding on November 29, 2010. [ECF No. 1.] In an attempt to meet the high standard to plead lack of good faith required by the District Court's decision in *Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC*, 516 B.R. 18 (S.D.N.Y. 2014) (the "**Good Faith Decision**"), the Trustee filed the Amended Complaint on December 21, 2018. [ECF No. 167.]

The Trustee now seeks to avoid and recover $25,852,737 in the Transfers that Square One received from BLMIS between December 15, 1998, and December 11, 2008. Am. Compl. ¶ 2. Based on the above allegations, the Trustee brings seven claims against Square One:

Count One	Intentional fraudulent transfer under section 548(a)(1)(A)[2]
Count Two	Constructive fraudulent transfer under section 548(a)(1)(B)
Count Three	Intentional fraudulent transfer under New York Debtor and Creditor Law ("**DCL**") section 276
Counts Four through Six	Constructive fraudulent transfer under DCL sections 273, 274, and 275
Count Seven	Undiscovered fraudulent transfer under DCL section 276 and New York Civil Practice Law and Rules ("**CPLR**") section 213(8)

[1] If the Court denies this Motion to Dismiss and Square One must file an answer to the Amended Complaint, Square One reserves the right to object to the Bankruptcy Court's authority to enter a final order or judgment in this adversary proceeding. *See* Fed. R. Bankr. Proc. 7008. Square One believes the Bankruptcy Rules do not require it to assert such an objection in a motion to dismiss under Rule 7012, *see* Fed. R. Bankr. Proc. 7012, because the motion addresses only legal issues, which would be reviewed by the District Court *de novo*, and because a court does not enter a final judgment *against* a defendant on a motion to dismiss. If Rule 7008 requires an objection at the motion-to-dismiss stage to preserve a defendant's objection when filing an answer, Square One objects.

[2] All section references are to the Bankruptcy Code, 11 U.S.C. § ___, unless specified otherwise.

Id. ¶¶ 191-236. Each Count seeks avoidance of the transfers, preservation under section 551, recovery under section 550, disgorgement of profits, imposition of a constructive trust, attorneys' fees, costs, prejudgment interest, and other relief.

III. The Amended Complaint's Allegations About Square One's Actual Knowledge of or Willful Blindness to BLMIS's Ponzi Scheme

Square One began investing in BLMIS after Estenne met with BLMIS employee Frank DiPascali in 1998. *See id.* ¶ 71. The Amended Complaint alleges only one other communication between Estenne and BLMIS staff over the course of the next decade, in 1999, when DiPascali allegedly asked Square One to remove references to BLMIS from Square One's offering memorandum. *Id.* ¶¶ 129, 131. Without any specifics, the Amended Complaint alleges generally that "Estenne communicated with BLMIS on Square One's behalf," *id.* ¶¶ 75, 68, but also alleges that "BLMIS's records do not show that Estenne or SAM met with Madoff." *Id.* ¶ 142. The Amended Complaint does not allege any other communications between Square One and BLMIS.

The Amended Complaint relies heavily on a quantitative analysis that Estenne performed of BLMIS ("the **Estenne Study**") in October 1999 to allege Estenne knew that BLMIS was a fraud or was not trading securities or turned a blind eye to that fact. According to the Amended Complaint, the Estenne Study gathered publicly available information about BLMIS's trading practices and returns by "comparing the performance of [BLMIS's split-strike conversion strategy ("**SSC Strategy**")] to the performance of the S&P 500 Index over 118 months from January 1990 to October 1999." *Id.* ¶ 100. The analysis looked at information that was visible, if not apparent, to every sophisticated investor in BLMIS, and showed that there was a lack of correlation between BLMIS's purported returns and the performance of the S&P 100 Index; BLMIS did not exit the market during downturns; BLMIS had consistently positive returns over a ten-year period; the SSC Strategy purportedly had a lower risk but higher return profile than other selected indices; and the consistent positive returns were implausible. *Id.* ¶¶ 102–25.

The Amended Complaint alleges the Estenne Study led Estenne to "beg[i]n suspecting BLMIS was not trading securities," *id*. ¶ 6, but provides no facts or specific allegations that Estenne actually harbored such a suspicion. *See also id.* ¶ 126 (repeating the general assertion that "Estenne recognized additional evidence that caused him to suspect there was a high probability BLMIS was not trading securities on behalf of Square One," without alleging the content of that evidence or how such information would demonstrate that BLMIS was not trading securities). The Amended Complaint does not allege that the Estenne Study itself concluded that BLMIS was a fraud or was not trading securities or that as a result, Estenne actually knew or believed there was a high probability that BLMIS was a fraud. The Amended Complaint relies only on Estenne's general experience in investment management, not on any specific facts, to derive from the Estenne Study Estenne's alleged actual knowledge of or subjective belief that BLMIS was a Ponzi scheme. *See id.* ¶¶ 111, 119, 122, 125 (repeating "[a]s an expert in due diligence and fraud detection," Estenne was able to understand the study's findings). That is, the Amended Complaint alleges he *should* have known.

The Amended Complaint next claims that in 2003, Estenne acquired actual knowledge BLMIS was not trading securities, based solely on allegations about unnamed individuals and their generalized "BLMIS-related concerns." *Id*. ¶ 155. The Amended Complaint alleges, as part of his work for Partners Advisers, an unnamed "senior officer who co-headed Partners Advisers' diligence operations" (the "**Diligence Officer**"), *id*. ¶ 9, attended BLMIS feeder funds' presentations, *id*. ¶ 150, which provided the Diligence Officer with publicly available information regarding BLMIS's investment strategy, including that BLMIS served as broker, investment adviser, and custodian for the funds. *Id*. ¶ 151. The Diligence Officer allegedly left the presentations "very concerned" that the presenters were unable to answer what he viewed as "basic" questions, which the Amended Complaint does not describe, other than a question about

how BLMIS maintained positive returns during the "dotcom bubble". *Id.* ¶¶ 152-54. The Amended Complaint does not allege the unnamed Diligence Officer had actual knowledge that BLMIS was not trading securities, but alleges his oral report gave Estenne actual knowledge that BLMIS was not trading.

Following the funds' presentations, the Amended Complaint alleges, the unnamed Diligence Officer "talked to several investment professionals that he trusted about his BLMIS-related concerns." *Id.* ¶ 155. The unnamed Diligence Officer then reported his "concerns" to Estenne and recommended that Partners Advisers "blacklist BLMIS feeder funds," *id.* ¶ 157 (quotations omitted), which Partners Advisers did. *Id.* ¶ 158.

But the Amended Complaint does not allege the unnamed Diligence Officer learned information from the presentations that was not otherwise publicly available or learned or concluded on his own that BLMIS was not trading securities. Rather, the Amended Complaint alleges only that the unnamed Diligence Officer believed "no one could explain to him how BLMIS's investment returns were possible." *Id.* ¶ 156. Nowhere does the Amended Complaint allege the unnamed Diligence Officer told Estenne that he knew or believed BLMIS was not trading securities. And nowhere does the Amended Complaint allege any facts that show Estenne knew or believed BLMIS was not trading securities as a result of his conversation with the unnamed Diligence Officer. The Amended Complaint provides only the conclusory allegation that "Estenne learned of more information that . . . gave him actual knowledge." *Id.* ¶ 149.

With respect to willful blindness, the Amended Complaint does not allege facts demonstrating Estenne believed there was a high probability BLMIS was not trading securities. The Amended Complaint only asserts in a conclusory manner that Estenne "suspect[ed] there was a high probability BLMIS was not trading securities," *id.* ¶ 126, and "ignor[ed] his suspicions." *Id.* ¶ 128. The Amended Complaint claims Estenne "Abandoned His Principle[s]"

that "Investment Transparency Is 'Critical,'" "Ongoing Investment Due Diligence is 'Paramount,'" and "the 'Proper' Investment Fundamentals Require an Independent Custodian." *Id*. ¶¶ 126–148. The Amended Complaint alleges that Square One removed references to BLMIS from the offering memorandum at DiPascali's request, *id*. ¶ 131; failed to require BLMIS to identify the counterparties to its options trades, *id*. ¶ 134; delegated discretion over the IA Account to BLMIS, *id*. ¶ 136; never visited BLMIS, *id*. ¶ 141; entered into a sub-custody agreement with BLMIS, *id*. ¶ 146; and failed to hire a new independent custodian in 2006 after Bank of Bermuda left that position, *id*. ¶ 173. The Trustee's theory appears to be that Estenne was motivated to cover up Madoff's fraud to help Square One, as a new investment fund, grow its profile and earn management fees from its customers, *id*. ¶ 12, while protecting "himself and his brand" by keeping the other fund he managed, the ART Fund, from investing in BLMIS. *Id.* ¶ 11.

ARGUMENT

This Court should dismiss all the Trustee's claims under Federal Rule of Civil Procedure 12(b)(6) because the Amended Complaint fails to allege plausibly that Square One had actual knowledge of or was willfully blind to the fact that BLMIS was a fraud or was not trading securities.

I. Legal Standard for a Motion to Dismiss under Rule 12(b)(6)

The Court must dismiss a claim under Federal Rule of Civil Procedure 12(b)(6) "when the allegations in a complaint, however true, could not raise a claim of entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007). Moreover, a claimant's allegations "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) (quoting *Twombly*, 550 U.S. at 570). A plausible claim pleads facts "that allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

While the Court must accept well-pleaded factual allegations as true, it need not accept assertions that are unsupported by factual allegations, *id.* at 678–79, nor "legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986); *see also Spool v. World Child Int'l Adoption Agency*, 520 F.3d 178, 183 (2d Cir. 2008) ("Although we construe the pleadings liberally, 'bald assertions and conclusions of law will not suffice.'").

II. The Legal Standards the Trustee Must Meet To Avoid the Transfers

A. Section 546(e) Limitation on Avoidability

Section 546(e) limits the Trustee's avoiding powers in this SIPA case because BLMIS was a stockbroker and transfers to his customers were either "settlement payments" or made "in connection with a securities contract." *Picard v. Ida Fishman Revocable Trust,* 773 F.3d 411, 417 (2d Cir. 2014), *cert. denied,* 135 S. Ct. 2859 (2015); *Picard v. Katz,* 462 B.R. 447, 452 (S.D.N.Y. 2011). Based on the extensive case law that has developed in this SIPA proceeding, those limitations on the Trustee's power to avoid a transfer that is a return of principal (rather than payment of fictitious profits) may be described in three rules:

1. If the transferee had actual knowledge BLMIS was not trading securities, the Trustee may "avoid and recover preferences and actual and constructive fraudulent transfers to the full extent permitted under state and federal law." *Picard v. Legacy Capital Ltd.*, 548 B.R. 13, 28 (Bankr. S.D.N.Y. 2016); *see also Picard v. Kingate Global Fund, Ltd.*, No. 08-99000 (SMB), 2015 WL 4734749, at *12 (Bankr. S.D.N.Y. Aug. 11, 2015).
2. If the transferee did not have actual knowledge but "willfully blinded [itself] to the fact that BLMIS was not engaged in the actual trading of securities," the Trustee may avoid only actual fraudulent transfers under section 548(a)(1)(A). *Kingate Global Fund*, 2015 WL 4734749, at *12; *Picard v. Merkin*, 515 B.R. 117, 139 (Bankr. S.D.N.Y. 2014).

3. If the transferee did not have actual knowledge and did not willfully blind itself to the fraud, the Trustee may not avoid the transfers at all. *See Merkin*, 515 B.R. at 139.

The Trustee not only must allege the elements of the fraudulent transfer causes of action, he also must allege the transfers were not received in "good faith" within the meaning of section 548(c) by alleging either actual knowledge or willful blindness or both.[3] *Good Faith Decision*, 516 B.R. at 24; *see also In re BLMIS*, 590 B.R. 200, 205–06 (Bankr. S.D.N.Y. 2018) (discussing District Court rulings requiring the trustee to plead lack of good faith). Therefore, to avoid any transfers at all, the Trustee must plausibly allege, with sufficient supporting facts, that the transferee had actual knowledge that BLMIS was not trading securities or had willfully blinded itself to the fraud.

B. Actual Knowledge and Willful Blindness

Case law has also defined what constitutes sufficient, plausible allegations of actual knowledge and willful blindness and, more importantly, what does not. This Court has stated the standard:

> "Knowledge" is "[a]n awareness or understanding of a fact or circumstance; a state of mind in which a person has no substantial doubt about the existence of a fact." BLACK'S LAW DICTIONARY 1003 (10th ed. 2014) ("BLACK"); *accord Merkin*, 515 B.R. at 139; *Kingate,* 2015 WL 4734749, at *13. "Actual knowledge" is "direct and clear knowledge, as distinguished from constructive knowledge." BLACK at 1004. "Thus, 'actual knowledge' implies a high level of certainty and absence of any substantial doubt regarding the existence of a fact." *Merkin*, 515 B.R. at 139.
>
> In contrast, "willful blindness" involves two elements: "(1) the defendant must subjectively believe that there is a high probability that a fact exists and (2) the defendant must take deliberate actions to avoid learning of that fact." *Global–Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 131 S.Ct. 2060, 2070, 179 L.Ed.2d 1167

[3] While the transferee retains the burden to plead that it gave value for the transfers under section 548(c), *see Merkin*, 515 B.R. at 138, the Amended Complaint alleges Square One was a net loser in its investment in BLMIS, depositing more cash than it withdrew, *see* Am. Compl., Ex. B at 20, which satisfies Square One's burden to show it gave value.

> (2011). If a person who is not under an independent duty to investigate "nonetheless, intentionally chooses to blind himself to the 'red flags' that suggest a high probability of fraud, his 'willful blindness' to the truth is tantamount to a lack of good faith." *Katz,* 462 B.R. at 455; *accord Merkin,* 515 B.R. at 139. "Thus, willful blindness connotes strong suspicion but *some* level of doubt or uncertainty of the existence of a fact and the deliberate failure to acquire knowledge of its existence." *Merkin,* 515 B.R. at 140 (emphasis in original).

Legacy Capital, 548 B.R. at 29. This Court's prior decisions in other avoiding power actions have defined the contours of these two standards.

1. Actual Knowledge

Courts measure actual knowledge by a subjective test—what the transferee actually knew—not by an objective test—what *should* the transferee have known or figured out based on the facts he actually knew. *Good Faith Decision*, 516 B.R. at 23; *see also Picard v. Avellino*, 469 B.R. 408, 412 (S.D.N.Y. 2012).

A conclusory allegation of actual knowledge without more does not suffice. The complaint must allege detailed facts showing actual knowledge. For example, this Court found adequate a constellation of factual allegations supporting actual knowledge: the transferee fund's principals were part of Madoff's inner circle; met with Madoff at least twice a year; participated in hundreds of telephone conversations with Madoff over a four-year period; refused introductions of fund investors to Madoff; fabricated stories to explain BLMIS's trading results; did not have the fund's auditor audit BLMIS; knew of impossibly consistent returns over many years, including years when the markets were down; knew of impossibly large trading volume; saw trade pricing outside the daily trading range; reviewed BLMIS account statements that were inconsistent with Madoff's purported trading strategy and showed settlement date anomalies, unconventional dividend timing, and illegal margin trades; and were aware of external badges of fraud, including lack of scalability, lack of independent oversight, lack of customary internal controls, lack of appropriate technology, lack of ordinary management fees, non-identification of

option counterparties, third-party warnings of fraudulent activity, and a "strip-mall" auditor. *Kingate Global Fund*, 2015 WL 4734749, at *3–*9. This Court has also found adequate allegations that the defendant met "behind closed doors" with Madoff two to three times a year and agreed with Madoff to prepare fake letters of instruction to BLMIS. *Picard v. Magnify Inc.*, 583 B.R. 829, 837, 843–44 (Bankr. S.D.N.Y. 2018).

By contrast, where a complaint alleged only that the transferee fund's principal told another investment professional that BLMIS "might" be a Ponzi scheme and the other professional noted the principal believed there was "some probability" BLMIS was a Ponzi scheme, the allegations were inadequate. *Merkin*, 515 B.R. at 140. These allegations "connote[d] a strong suspicion but not the absence of doubt associated with actual knowledge." *Id*. Similarly, a colleague's warning that BLMIS "could be a Ponzi scheme" did not imply the principal agreed that it was. *Id*. In another case, allegations that a research report investors reviewed showed BLMIS's impossible option trades, prices outside the daily trading range, and an inability to replicate the SSC Strategy, but did not conclude BLMIS was a Ponzi scheme or was not trading securities "[did] not plead a plausible claim that [the investors] actually knew that Madoff was not trading securities." *Legacy Capital*, 548 B.R. at 29, 31. The complaint failed to allege actual knowledge despite the report "arous[ing] suspicions" about BLMIS, evidenced by internal emails among the investors questioning how BLMIS could achieve the reported results. *Id*. at 29-30.

Other courts have dismissed similar allegations that a defendant should have known of fraud as insufficient stand-ins for facts alleging actual knowledge of a Ponzi scheme. One court found that plaintiffs failed to allege actual knowledge for the purpose of an aiding and abetting claim where they alleged that a defendant bank conducted "frequent and in-depth review" of the relevant accounts, "saw certain indicators of fraudulent activity," such as commingling of investor funds, and had a "close relationship" with the perpetrator of the Ponzi scheme, reflected

by, among other things, "frequent lunch meetings" where defendant's employees discussed with the perpetrator his "business and … accounts." *In re Agape Litig.*, 773 F. Supp. 2d 298, 309-13, 317 (E.D.N.Y. 2011). Another court found allegations that a defendant bank "knew of the manner in which the … transactions were conducted" suggested only that the bank "should have known of [the] fraud had they been paying closer attention and looked into some of [the] 'suspicious' transactions," not actual knowledge for the purpose of an aiding and abetting fraud claim. *In re Palm Beach Fin. Partners, L.P.*, 488 B.R. 758, 773 (Bankr. S.D. Fla 2013); *see also Litson-Gruenber v. JPMorgan Chase & Co.*, No. 7:09-CV-056-0, 2009 WL 4884426, at *3 (N.D. Tex. Dec. 16, 2009) (rejecting allegations of "suspicious activity" that "should have provided" the defendant bank "notice of the [P]onzi scheme").

More generally, sophisticated investment professionals know that a Ponzi scheme inevitably collapses, so it is not plausible that a sophisticated professional would continually invest in a Ponzi scheme over an extended period. *See Legacy Capital*, 548 B.R. at 32. The alleged lure of fees and reputational enhancement does not suggest otherwise. The fees would amount to only a small percentage of the likely losses from the scheme's collapse, *see Picard v. BNP Paribas S.A.*, 594 B.R. 167, 202–03 (Bankr. S.D.N.Y. 2018), and whatever reputational enhancement might result from amassing enormous assets under management in a particular fund would be quickly dashed when investors and the public discovered that the investment professional did not detect the fraud and lost the investors' money.

Finally, a complaint does not adequately allege actual knowledge by alleging willful blindness. *Kingate Global Fund*, 2015 WL 4734749, at *13.

2. Willful Blindness

Willful blindness consists of two elements: subjective belief in a high probability that a fact exists and deliberate action not to learn the fact. To survive a motion to dismiss, a claim that

requires a showing of willful blindness must plausibly allege both elements with sufficient supporting facts.

a) Subjective belief

This Court has found the Trustee adequately, plausibly pleaded subjective belief where the complaint alleged numerous red flags the transferee's principal saw, including a report from a research firm that confirmed "some probability" of a fraud, impossible option volumes, returns that were too good to be true and lacked correlation with the S&P 500, an absence of a third-party custodian, an unusual fee structure, and a strip-mall accountant. *Merkin*, 515 B.R. at 141–42. Importantly, in that case, the complaint also alleged the principal "specifically acknowledged a list of some of his concerns with BLMIS," *id*. at 140, "admitted Madoff 'appeared' to be running a Ponzi scheme," and made statements indicating his belief that BLMIS's business practices were suspicious, based on his close, personal relationship that gave him access ("I've made my peace with Bernie"), among numerous other specific allegations. *Id*. at 140.

By contrast, in *Picard v. BNP Paribas*, the complaint alleged awareness of "red flags" and of performance impossibilities, pricing inaccuracies, implausible trading volumes, secrecy, and misreporting the number of accounts, dividends, and settlement dates. 594 B.R. at 184–85. The complaint alleged the defendant had closed a fund because of concerns about BLMIS's legitimacy. *Id*. at 199. And it alleged the defendant had generalized, unidentified "concerns" from third parties, including a rival's refusal to invest with BLMIS, another fund's withdrawal from its BLMIS investment, suspicions raised by third parties regarding BLMIS's minimal fees, and another bank's instruction to delete references to BLMIS from marketing materials. *Id*. at 182–84. Yet this Court rejected the argument that these allegations created the plausible inference that the defendant actually subjectively believed that BLMIS was operating a Ponzi scheme. 594 B.R. at 198–202. Another court similarly rejected the argument that trading irregularities, including

evidence that the debtor was "trading at extremely high risk" and other "indicat[ors] that the trading … did not make economic sense," coupled with irregularities in the account's opening, could not establish subjective belief for the purpose of the willful blindness inquiry. *In re Int'l Mgmt. Assocs., LLC*, 563 B.R. 393, 427-29 (Bankr. N.D. Ga. 2017).

On their own, allegations of "red flags" do not satisfy the subjective standard applicable here. The allegations of "red flags" must include not only facts showing "that the defendant was actually aware of the alleged flags," but also allegations that "the flags were so obviously indicative of misconduct that the defendant must have been aware of the wrongdoing and desirous of furthering it." *Zutty v. Rye Select Broad Mkt. Prime Fund, L.P.*, No. 1113209/09, 2011 WL 5962804, at *12 (N.Y. Sup. Ct. Apr. 15, 2011) (quoting *South Cherry St., LLC v. Hennessee Grp. LLC*, 573 F.3d 98 (2d Cir. 2009)) (internal citations, quotations, and alterations omitted).

b) Deliberate action

The Supreme Court set a high bar for finding the second element of willful blindness: the defendant must "tak[e] deliberate actions to avoid confirming a high probability of wrongdoing." *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 769 (2011) (applying the willful blindness standard from the criminal context to a patent case). The Court contrasted the willfully blind defendant, who takes such deliberate actions, with the "reckless defendant"—"who merely knows of a substantial and unjustified risk of such wrongdoing," or the "negligent defendant," "who should have known of a similar risk but, in fact, did not." *Id.* at 770.

As the District Court held in these proceedings, "it is undisputed that a securities investor has no inherent duty to inquire about his stockbroker, and nothing in SIPA creates such a duty." *Good Faith Decision*, 516 B.R. at 22 (quotation marks omitted). So to satisfy the second element of willful blindness, more is required than an allegation of failure to investigate. A complaint must allege the deliberate steps the transferee took to shun suspicions and stay ignorant. And as with

"actual knowledge," this Court has concluded that the lure of fees and enhanced reputation does not plausibly support a theory that a BLMIS customer deliberately would ignore a subjective belief that BLMIS was a fraud. *See BNP Paribas*, 594 B.R. at 202-04.

III. The Amended Complaint Does Not Plausibly Allege Facts To Support Avoiding the Transfers.

A. The Trustee Does Not Plausibly Allege Facts That Support Actual Knowledge.

The Amended Complaint contains the bare allegation that Estenne, and therefore Square One, "knew, or at least suspected to a high probability, that BLMIS was not trading securities on behalf of Square One." Am. Compl. ¶ 13; *see also id*. ¶ 149. It does not allege how Estenne "knew" or what he did that showed he "knew."

The Amended Complaint alleges that an unnamed Diligence Officer reported his concerns and suspicions about BLMIS to Estenne—concerns that presenters from other funds the unnamed Diligence Officer investigated could not answer certain unspecified questions about BLMIS's business, and that other investment professionals had "blacklisted BLMIS feeder funds." *Id*. ¶¶ 152-57. But the Amended Complaint does not allege that the unnamed Diligence Officer knew BLMIS was not trading securities, only that he was suspicious of BLMIS's results. If the Amended Complaint is unable to allege the unnamed Diligence Officer knew, it cannot plausibly lead to the conclusion that Estenne knew. *See Legacy Capital*, 548 B.R. at 30-31 (complaint failed to plead actual knowledge where report defendants reviewed and various emails expressing concerns did not themselves conclude that BLMIS was not actually trading securities); *Merkin*, 515 B.R. at 140 (principal's statement that BLMIS "might" be a Ponzi scheme insufficient to plead "the absence of doubt associated with actual knowledge").

The Amended Complaint alleges that Estenne agreed with the Diligence Officer's recommendation to blacklist BLMIS feeder funds and "Madoff-related investments" from the other investment fund Estenne managed, the ART Fund, and though he was invested in the ART

Fund, he had no personal exposure to Square One. Am. Compl. ¶¶ 157, 164. The Amended Complaint offers no facts to support its implied surmise that Estenne was not invested in Square One because he knew or believed BLMIS was a fraud. As this Court has previously ruled, even withdrawing an investment does not necessarily establish even a strong suspicion of fraud, let alone actual knowledge. *See BNP Paribas*, 594 B.R. at 198–202. In the absence of a more specific explanation, the Amended Complaint's allegation that Estenne decided to withdraw the ART Fund's investments in BLMIS does not plausibly show actual knowledge.

The Amended Complaint also alleges that Estenne "covered for Madoff" by hiding Square One's operations from his unnamed Diligence Officer, and, apparently to suggest some nefarious purpose, that Estenne never asked the unnamed Diligence Officer to "lend his extensive investment due diligence expertise to Square One's business activities," even though he used other Partners Advisers employees, whom the Amended Complaint names, to perform back-office and administrative functions for Square One. Am. Compl. ¶ 168–70. The more compelling inference is that Square One needed administrative support, because it had no staff of its own, but did not need diligence support, as the fund invested exclusively with BLMIS, which effectively acted as the fund's investment adviser. Where there is an "obvious alternative explanation" for a complaint's allegations, the allegations do not meet the required standard of plausibility. *Twombly*, 550 U.S. at 567. In this case, the refusal to name the Diligence Officer on whose word the Trustee bases most of his allegations about Estenne's conduct, while not hesitating to name other Partners Advisers employees, demonstrates the implausibility of the Trustee's theory.

The Amended Complaint also alleges that after Bank of Bermuda resigned as custodian in 2006, Square One did not replace it, so "no independent financial institution was responsible for: (i) overseeing BLMIS's custody…; (ii) verifying the existence of value of assets…; or (iii)

verifying that BLMIS properly segregated Square One's assets." Am. Compl. ¶ 173. This allegation does not differ in substance from the same allegation this Court previously rejected as even an indicator of subjective belief: that BLMIS self-custodied the accounts, which was widely known among BLMIS investors. *See BNP Paribas*, 594 B.R. at 178, 199.

Finally, the Amended Complaint alleges that Estenne resisted the Trustee's discovery, implying that he did so to prevent the Trustee from learning about Square One's due diligence. Am. Compl. ¶¶ 177–80. Resisting discovery says nothing about an investor's actual knowledge years before. As this Court is well aware from the long history of these proceedings, the more compelling inference is the enormous expense, distraction, and annoyance of discovery. Those allegations do not in any way suggest actual knowledge of a Ponzi scheme.

B. The Trustee Does Not Plausibly Allege Facts That Support Willful Blindness.

Although the Amended Complaint asserts that Estenne and therefore Square One was willfully blind to the BLMIS fraud, *id*. ¶ 182, it does not allege facts that support that claim. The only facts the Amended Complaint alleges on the first element of willful blindness—a subjective belief of a high probability that BLMIS was a fraud—are that additional facts caused Estenne "to suspect," *id*. ¶ 126, without facts demonstrating that suspicion, that BLMIS was a fraud. On the second element—deliberate action to avoid learning the facts—the Amended Complaint alleges only that Estenne abandoned his investment principles in managing Square One and no longer relied on his unnamed Diligence Officer. These allegations do not meet the standard for pleading willful blindness.

1. Subjective belief

The Amended Complaint does not plead that Estenne "specifically acknowledged a list of some of his concerns with BLMIS," or "confirmed [his] belief of 'some probability' that BLMIS was a Ponzi scheme." *Merkin*, 515 B.R. at 141. The Amended Complaint does not allege Estenne expressed worries or suspicions about Square One's investments in BLMIS, let alone a belief in a

high probability that BLMIS was not trading securities. *See Legacy Capital*, 548 B.R. at 19, 35 (finding that the complaint alleged subjective belief where defendants' employees, in specific emails, "expressed their disquiet" regarding the fund's BLMIS investment).

Rather, the Amended Complaint's allegations resemble those this Court and others have found insufficient to support a plausible allegation of a belief in a high probability that BLMIS was a fraud. Knowledge of "red flags" that were generally publicly available, such as trading impossibilities, consistent high returns, lack of correlation with the S&P 100, and self-custody; following an instruction to delete a reference to BLMIS from marketing materials; and even withdrawal of a fund's investments in BLMIS (here, the ART Fund) are insufficient to show a subjective belief that BLMIS was not trading securities. *See BNP Paribas*, 594 B.R. at 198–202; *see also MLSMK Inv. Co. v. JP Morgan Chase & Co.,* 737 F. Supp. 2d 137, 143–44 (S.D.N.Y. 2010), *aff'd in part*, 431 Fed. App'x. 17 (2d Cir. 2011), *and aff'd,* 651 F.3d 268 (2d Cir. 2011) ("(1) noticing unusually high returns on Madoff investment-linked funds …; (2) figuring out that the [BLMIS] market making business could not support Madoff's alleged $7 billion investment advisory operation … and (3) learning that [BLMIS's] account records … showed unusual activity … and low cash balances" were insufficient to plead recklessness) (citations and quotations omitted)). The Amended Complaint alleges no more than the general red flags that were publicly available, coupled with Estenne's investment sophistication, a trait in common to a greater or lesser degree with all feeder fund managers.

As this Court has noted, "the existence of the red flags supports the more compelling inference that Madoff fooled the Defendant[] as he did individual investors, financial institutions and the regulators." *BNP Paribas*, 594 B.R. at 198–99. It is not enough to allege the dots and the defendant's ability to connect them. The complaint must allege that the defendant actually did connect them. *See, e.g.*, *MLSMK Invs. Co.*, 737 F. Supp. 2d at 144. The Amended Complaint does

not. The difference is between the subjective standard "believed" and the objective standard "should have believed." *Legacy Capital*, 548 B.R. at 28, 34. The law requires the former; the Amended Complaint provides only the latter.

Although some investment professionals stayed away, public reports suggest few if any did so because they knew BLMIS was not trading securities. The extensive litigation record in these proceedings and elsewhere show they stayed away for regulatory reasons, out of suspicion that BLMIS was front-running or operating in some other illegal fashion, or just out of a generalized concern that things did not seem right. But as BLMIS's growth over decades into the largest Ponzi scheme in history shows, many investment professionals did not stay away and instead invested hundreds of millions of dollars. The Second Circuit has recognized the relative sophistication of the individuals who interacted with BLMIS gave those individuals no edge in uncovering Madoff's fraud. *See DeLollis v. Friedberg, Smith & Co., P.C.*, 600 Fed. App'x. 792, 796 (2d Cir. 2015) (affirming dismissal of tort claims against auditor who failed to uncover BLMIS's fraud, observing that "Madoff was successful in concealing his fraud from countless sophisticated entities experienced in the financial world, including the SEC, Wall Street banks, and auditors"). *See also In re Merkin*, 817 F. Supp. 2d 346, 356 (S.D.N.Y. 2011), *order vacated in part on reconsideration sub nom. In re Merkin*, No. 08 CIV. 10922 (DAB), 2015 WL 10847318 (S.D.N.Y. Aug. 24, 2015) (noting Madoff perpetrated his scheme "without detection by some of the most sophisticated entities in the financial world").

Estenne fell into the second category—those who did not stay away but invested. Investing does not imply that Estenne knew or even believed in a high probability that BLMIS was not trading securities, and the Trustee does not allege otherwise. In fact, it implies just the opposite, for what investor, sophisticated or not, would invest in a scheme he believed was

doomed from the start to collapse and lose money. *See Legacy Capital*, 548 B.R. at 32; *Katz*, 462 B.R. at 454.

2. Deliberate action

Even if the Amended Complaint sufficiently alleged Estenne's subjective belief in a high probability that BLMIS was not trading securities, it does not allege that Estenne took deliberate action to avoid learning the facts. The Amended Complaint's principal allegation is that Estenne suspected that BLMIS was a fraud and did not stop investing in BLMIS. By alleging, as the basis for willful blindness, that Square One did not withdraw its investment from BLMIS once it believed BLMIS to be a fraud, the Amended Complaint bootstraps the second, independent element of willful blindness, deliberate action, onto the first, subjective belief.

Otherwise, the Amended Complaint alleges only that Estenne investigated, producing the "Estenne Study," and still maintained his investment, while not abiding by his ordinary investment principles. Estenne's investigation negates any inference that he took deliberate action to avoid learning the facts. *See Legacy Capital*, 548 B.R. at 33 ("[I]t would have been 'peculiar' for Legacy to commission Khronos to conduct . . . due diligence . . . if it already knew . . . that BLMIS was a fraud"). The Amended Complaint's allegations about the unnamed Diligence Officer's oral report four years after the Estenne Report, which contained only general concerns and publicly available "red flags" that the Estenne Report had already identified, are insufficient to show a subjective belief that would have imposed a duty to investigate again, as the unnamed Diligence Officer's concerns contained nothing new or specific. *See Good Faith Decision*, 516 B.R. at 22 ("[I[t is undisputed that a securities investor has no inherent duty to inquire about his stockbroker, and nothing in SIPA creates such a duty …. Absent a duty to investigate, a customer's failure to do so does not equate with a lack of good faith.") (quotation marks and citations omitted); *see also Kingate Global Fund*, 2015 WL 4734749, at *12; *Avellino*, 469 B.R. at 412; *Katz*, 462 B.R. at 455.

The Amended Complaint's allegations that Estenne's management of Square One fell below his personal high standards for investment management fare no better. They provide no explanation linking that failure to a subjective belief that BLMIS was not trading securities and was instead a Ponzi scheme, as would be required to show deliberate action to avoid learning the facts. *See In re Agape Litig.*, 773 F. Supp. 2d 298, 320 (E.D.N.Y. 2011) (finding that plaintiffs failed to allege that defendants took deliberate steps "to avoid knowledge of the [Ponzi scheme] specifically, as opposed to account fraud generally"); *cf. Merkin*, 515 B.R. at 141-42 (complaint adequately alleged "that Merkin took deliberate actions to avoid learning the truth about BLMIS" when it alleged he told Madoff during a telephone conversation that he (Merkin) advised others, "don't ask so many questions" about BLMIS).

And the departure from those principles related only to three areas—transparency, ongoing due diligence, and independent custody, *see* Am. Compl. ¶¶ 129–48—all of which related to red flags already publicly known. The Amended Complaint does not allege that Estenne avoided learning any facts that were not already widely known. Thus, the Amended Complaint fails to allege plausibly that any of Estenne's alleged failures to ensure transparency, continued due diligence, or independent custody amounted to more than, at worst, carelessness, let alone the deliberate actions required to show that Estenne tried not to learn that BLMIS was a Ponzi scheme.

Even if those allegations could amount to a claim that Estenne could or should have been more diligent in his interactions with or more closely monitored BLMIS, the doctrine of "willful blindness [has] an appropriately limited scope that surpasses recklessness and negligence." *Global-Tech Appliances, Inc.*, 563 U.S. at 769; *see also In re Wyly*, 552 B.R. 338, 462 (Bankr. N.D. Tex. 2016) ("[N]egligence, carelessness, or foolishness is not enough to establish willful blindness"). Thus, allegations that Square One did not conduct due diligence on BLMIS—which it had no duty

to conduct—fail to meet the demanding standard of pleading that Square One turned a blind eye to strong suspicions of fraud. *See, e.g.*, *Iowa Pub. Employee's Retirement Sys. v. Deloitte & Touche LLP*, 919 F. Supp. 2d 321, 336 (S.D.N.Y. 2013) (ruling, in the securities fraud context, that to state a fraud claim "[i]t is not enough that [defendant] *should* have examined [the investment adviser's] books, or *should* have probed more forcefully" into red flags), *aff'd*, 558 Fed. App'x. 138 (2d Cir. 2014).

Most important is the overall implausibility of the Amended Complaint's allegations. The Trustee extolls Estenne's investment knowledge and expertise and stresses Estenne's desire to establish himself as a respected investment professional in the European market. The Trustee fails to explain why reputation and fees, which motivate all investment professionals, would be such powerful incentives for Estenne and Square One, which ultimately lost money investing in BLMIS. The Trustee does not plausibly allege why Estenne, a sophisticated investment professional—sophisticated enough to know a Ponzi scheme inevitably collapses—would knowingly continue to invest in one for years after detecting or even suspecting the fraud, all the while losing money on the investment. In fact, the Trustee says just the opposite—that "Estenne took deliberate measure to protect himself *and his brand*—Partners Advisers—from BLMIS's fraud," Am. Compl. ¶ 11 (emphasis added), confirming the common sense understanding that investing in a Ponzi scheme does not enhance one's reputation. Even if the Amended Complaint included specific allegations of facts supporting actual knowledge or subjective belief, which it lacks, it is not plausible that someone with Estenne's profile would continue to invest, as Square One did here.

IV. The Trustee Is Not Entitled to the Remedies He Seeks

If the Court does not dismiss all of the Trustee's substantive avoidance claims, the Court should still dismiss the Trustee's request for the remedies of disgorgement of profits and

constructive trust, as the Amended Complaint does not allege any of the elements required for the Trustee to be entitled to those remedies.

A. The Trustee is Not Entitled to Disgorgement of Profits

The Court should dismiss the Trustee's request that the Court direct Square One "to disgorge to the Trustee all profits, including any and all management fees, incentive fees, commissions, or other compensation and/or remuneration received by Square One, related to, arising from, or concerning the … Transfers." Am. Compl. at 48-51. First, as a net loser, Square One made no profits from the Ponzi scheme. *See* Am. Compl., Ex. B at 20 (showing deposits of $28,097,165 into and withdrawals of $25,852,737 from the IA Account), and therefore has no profits to disgorge.

Nevertheless, disgorgement of profits in the form of any management fees Square One earned is not a proper remedy in a section 548 avoidance action. Rather, the remedy provided is avoidance and recovery of "the property transferred, or, if the court so orders, the value of such property." 11 U.S.C. § 550(a). Management fees paid by Square One's customers, the only other profits the Trustee alleges Square One earned, Am. Compl. ¶ 73, do not constitute property transferred from BLMIS to Square One and are therefore not subject to avoidance. *Cf. Solow v. Reinhard (In re First Comm. Mgmt. Grp., Inc.*), 279 B.R. 230, 240 (Bankr. N.D. Ill. 2002) (considering whether commissions paid *by the debtor* to defendant were subject to avoidance).

While disgorgement is an equitable remedy generally available to the federal courts, *see S.E.C. v. Cavanaugh*, 445 F.3d 105, 117 (2d Cir. 2006), the Trustee brings only statutory claims under federal and New York state law. In the context of suits arising out of Ponzi schemes, disgorgement of profits is a possible sanction for violations of securities laws, *see, e.g.*, *S.E.C. v. McGinn, Smith & Co., Inc.*, No. 1:10-cv-457 (GLS/CFH), 2015 WL 667848, at *12 (N.D.N.Y. Feb. 17, 2015) (finding disgorgement of profits warranted as a sanction for egregious violations of federal securities

laws), which the Amended Complaint does not and cannot allege here, or a remedy for common law torts, which the Amended Complaint, again, does not and cannot allege. *See Picard v. Fairfield Greenwich Ltd.*, 762 F.3d 199, 208-10 (2d Cir. 2014) (contrasting suit against BLMIS feeder funds for alleged breach of independent duties owed to customers and for return of management fees, with Trustee's bankruptcy avoidance action alleging fraudulent transfer). Regardless whether the Court dismisses any of the Trustee's claims, it should dismiss the Trustee's request for disgorgement of profits.

B. The Trustee Is Not Entitled to a Constructive Trust

The Court should also dismiss the Trustee's request for relief in the form of a constructive trust, as the Amended Complaint does not allege the requirements for obtaining that relief. The remedy of a constructive trust requires "a showing that property is held under circumstances that render unconscionable and inequitable the continued holding of that property and that the remedy is essential to prevent unjust enrichment." *Picard v. Madoff*, 458 B.R. 87, 131 (Bankr. S.D.N.Y. 2011). In determining whether to impose a constructive trust under New York law, courts consider four factors: (1) a confidential or fiduciary relationship; (2) a promise, express or implied; (3) a transfer made in reliance on that promise; and (4) unjust enrichment. *Id.* at 131 n.31 (citing *Sharp v. Kosmalski*, 351 N.E.2d 721, 723 (N.Y. 1976)).

The Amended Complaint does not allege a confidential or fiduciary relationship between Square One and BLMIS, a promise by Square One to BLMIS relating to the Transfers, or that BLMIS made the Transfers in reliance on that promise. The Amended Complaint also does not allege Square One, who was a net loser in its investments with BLMIS, was unjustly enriched. *See, e.g., Pryor v. Ventola*, 398 B.R. 495, 501 (Bankr. E.D.N.Y. 2008) (constructive trust was not warranted under New York law where there was no showing that the defendant was unjustly enriched); *cf. Madoff*, 458 B.R. at 132 (holding that the Trustee adequately alleged entitlement to a

constructive trust by alleging that the defendants, Madoff's family members, were "unjustly enriched by property rightfully belonging to BLMIS").

Moreover, if the Trustee prevails on his avoiding power and recovery actions, he will have the remedy the law allows—a money judgment. A constructive trust is not a remedy for this action. If the Trustee does not prevail on the substantive claims, then there is no basis to award a constructive trust over property that Square One properly received and is entitled to keep.

The Court should dismiss the Trustee's request for a constructive trust.

CONCLUSION

For the reasons set forth above, Square One respectfully requests that the Court dismiss the Amended Complaint with prejudice.

Dated: New York, New York
February 14, 2019

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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, *Plaintiff-Applicant*, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, *Defendant*.	Adv. Proc. No. 08-01789 (SMB) SIPA LIQUIDATION (Substantively Consolidated)
In re BERNARD L. MADOFF, *Debtor*.	
IRVING H. PICARD, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Estate of Bernard L. Madoff, *Plaintiff*, v. SQUARE ONE FUND LTD., *Defendant*.	Adv. Proc. No. 10-04330 (SMB)

CERTIFICATE OF SERVICE

I, RICHARD B. LEVIN, hereby certify that on the 14th day of February, 2019, the following documents were electronically filed via the United States Bankruptcy Court for the Southern District of New York's CM/ECF system:

- **Square One Fund Ltd.'s Motion and Notice of Motion to Dismiss the Amended Complaint**

- **Memorandum of Law in Support of Square One Fund Ltd.'s Motion to Dismiss the Amended Complaint**

Registered users may access these filings through the Court's system, and notice of this filing will be sent to these parties by operation of the Court's Electronic Filing system.

Furthermore, the above-listed documents were served upon counsel for the Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Estate of Bernard L. Madoff via first-class mail and electronic mail on the 14th day of February, 2019.

Dated: New York, New York
February 14, 2019

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