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

**Trustee For Liquidation of Bernard L. Madoff Investment Securities Files Motion to Allocate Recovered Monies to The BLMIS Customer Fund and Return Stolen Funds to Customers**

**\$2.6 Billion to be Allocated to Customer Fund; Initial, Interim Pro Rata Distribution of Approximately \$272 Million to BLMIS Customers; Appeals of Picower, Levy Settlements and Net Equity Prevent Larger Payments**

**NEW YORK, NY – May 4, 2011** – Irving H. Picard, the Trustee for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) filed a motion today in the United States Bankruptcy Court for the Southern District of New York seeking approval to allocate \$2.6 billion of recovered monies to the BLMIS Customer Fund and to make an initial, interim distribution of approximately \$272 million from the Customer Fund to BLMIS customers whose claims have been approved by the Trustee.

“This initial distribution represents a significant milestone in the Trustee’s recovery efforts on behalf of BLMIS customers,” said David J. Sheehan, counsel to the Trustee and a partner at Baker & Hostetler LLP, the court-appointed counsel to the Trustee. “We can now begin to return stolen funds to their rightful owners. Our aggressive, global recovery effort has yielded great success and we have laid the groundwork for significant future recoveries, which we intend to distribute as quickly as possible.”

The motion notes that in the 29 months since his appointment, the Trustee has recovered more than \$7.6 billion, representing 44 percent of the approximately \$17.3 billion in principal that was lost in the Ponzi scheme by customers who filed claims by the July 2, 2009 bar date. Of those recoveries, however, significant amounts are unavailable to the Trustee for either allocation to the Customer Fund or distribution to customers with allowed claims at this time because of appeals. Most notably, two claimants have separately appealed the most significant settlement obtained by the Trustee to date – the \$5 billion settlement with the estate of Jeffrey Picower – and those monies cannot be allocated to the Customer Fund or distributed to customers until the appeals are resolved. The Trustee’s motion, therefore, is requesting the allocation of the remaining \$2.6 billion of recoveries to the Customer Fund. Of this amount, a significant portion must still be held in reserve until certain appeals are resolved, including appeals regarding the \$220 million settlement with the Levy family and \$80 million in other settlements related to the net equity appeal. Of the remaining \$2.3 billion available for distribution to customers with allowed claims, almost \$1.6 billion cannot be distributed at this time, until the net equity appeal is resolved. In addition, \$424 million cannot be distributed at this time due to pending litigation

and settlement discussions; the Trustee will distribute these funds if and when these claims are approved. The net result, after all reserves, is that approximately \$272 million will be distributed to BLMIS customers whose claims have been approved by the Trustee.

“It is regrettable that the landmark \$5 billion Picower settlement is unavailable for distribution to customers at this time because of frivolous appeals by two claimants,” said Mr. Sheehan. “Similarly, it is disappointing that an appeal has been filed regarding the Levy settlement, which was approved by the Bankruptcy Court more than a year ago. If the appeals of the Levy and Picower settlements are dismissed prior to the Bankruptcy Court’s approval of our distribution plan, the Trustee will immediately seek permission to allocate the more than \$5 billion in recovered funds to the Customer Fund and incorporate those funds into this initial distribution.”

The interim distribution of approximately \$272 million, or an average payment of \$222,551 on claims relating to 1,224 accounts, is about 4 percent of losses incurred by customers with net equity claims. Had the Picower settlement not been challenged, the payout would be almost 13 percent, or more than three times as much. (The calculation methodology appears at the end of this release.) Referring to the net equity dispute, Mr. Sheehan said, “The Trustee’s net equity definition is the only one accepted under SIPA, is consistent with decades of legal precedent and, in the Madoff case, has been upheld by the Bankruptcy Court. Certain parties contest these longstanding legal precedents and claim that BLMIS customers are entitled to receive the fraudulent amounts shown on the November 2008 BLMIS statements. The Trustee’s approach – long upheld in the courts – seeks to compensate BLMIS customers for their actual losses and distribute recovered funds on that basis. “While the Trustee is confident that our positions will prevail, by law, we must take a ‘worst case’ approach and calculate payouts and reserves as if appellants had prevailed,” added Mr. Sheehan. The \$2.6 billion that the Trustee seeks to allocate to the Customer Fund includes settlements and recoveries to date, including transfers from BLMIS bank accounts, the sale of assets, and refunds; the \$550 million settlement with Carl Shapiro, Robert Jaffe, and related entities; the \$470 million settlement with the Swiss bank, Union Bancaire Privée; the \$45 million settlement with Hadassah; and approximately \$45 million in preference payments and other settlements.

A copy of the motion is available on the Trustee's website at [www.madofftrustee.com](http://www.madofftrustee.com) or on the Bankruptcy Court’s website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov); Docket No. 08-01789 (BRL). The Bankruptcy Court will hold a hearing for approval of the motion on July 12, 2011. In addition to Mr. Sheehan, the Trustee acknowledges the contributions of the Baker & Hostetler attorneys who worked on this filing: Seanna Brown, Jacquelyn Rovine, Thomas Wearsch and Brian Bash.

### **Interim Distribution Calculation**

In order to make interim and final distributions from the Customer Fund, the Trustee must determine or estimate: (a) the total value of customer property available for distribution (including reserves for disputed recoveries), and (b) the total net equity of all allowed claims (including reserves for disputed claims).

There are unresolved issues – chiefly the appeal of the net equity definition and the appeals of the Picower and other settlements – that require maintenance of substantial reserves with respect to both the customer property numerator and the net equity claims denominator.

Nevertheless, even with taking into account reserves, it is now possible for the Trustee, on an interim basis, to determine the (a) allocation of property to the Customer Fund or the “numerator”; (b) amount of allowable net equity claims or the “denominator”; and (c) calculation of each customer’s minimum *pro rata* share of the Customer Fund.

The equation is as follows:

Fund of Customer Property (“Numerator”) = Customer *Pro Rata* Share

Allowable Customer Net Equity Claims (“Denominator”)

For the purposes of the interim distribution, the Trustee must reflect the unresolved issues and establish sufficient reserves to ensure that he could make a *pro rata* distribution to all potentially eligible claimants, whether or not he believes that their claims will be allowed at this time.

Because the value of allowable claims is under dispute, the Trustee must use the highest possible “denominator” which is, in this case, an adjusted amount reflecting the BLMIS fictitious statement balances as of November 30, 2008, or approximately \$57 billion. (This number differs from the widely reported \$65 billion because it eliminates claims that have been irrevocably withdrawn from the liquidation proceeding).

In contrast, were the net equity dispute not pending, the denominator for the amount of potentially allowable claims would be significantly less, providing for a much greater distribution to customers. The denominator would be the amount of allowable claims under the Trustee’s Net Investment Method under SIPA, which is currently calculated to be approximately \$17.3 billion.