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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 OPPOSES MOTION TO DISMISS COMPLAINT AGAINST
STERLING EQUITIES**

NEW YORK, NY – May 19, 2011 – Irving H. Picard, the Trustee for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”), today filed his opposition brief in the United States Bankruptcy Court for the Southern District of New York against the motion by Sterling Equities (“Sterling”), its partners, their family members, and certain related trusts and entities (the “Sterling Defendants”) seeking either the dismissal of the Trustee’s complaint against them or summary judgment.

In the opposition brief, the Trustee describes two critical components of the fiduciary mandate which form the basis of his claims against the Sterling Defendants. The first is to locate and recover fictitious profits, or “other people’s money,” that the Sterling Defendants received from BLMIS and to redistribute those assets equitably to those who withdrew less than they deposited.

The second critical component of the Trustee’s claims against the Sterling Defendants emanates from the bankruptcy law concept of good faith. A lack of good faith under the bankruptcy law does not require that the defendant actually did something illegal or knew that it was dealing with a Ponzi scheme. Instead, under bankruptcy law, a defendant did not act in good faith if what it knew about BLMIS gave it a reason to inquire further, but instead it turned a blind eye and continued to take money from an enterprise it should have known might be a fraud.

“Fred Wilpon, Saul Katz and the Sterling Partners are holding \$300 million in fictitious profits consisting of ‘other people’s money,’ stolen money that they received from Bernard Madoff. Yet they refuse to return this stolen money,” said David J. Sheehan, counsel to the Trustee and a partner at Baker & Hostetler LLP, the court-appointed counsel for the Trustee.

“This case is one of many actions undertaken by the Trustee to fulfill his fiduciary obligation to return stolen money to the rightful owners, who are BLMIS customers and creditors with approved claims,” said Mr. Sheehan. “As today’s filing shows, the law and the facts verify the Trustee’s allegations against the Sterling Defendants. There is no rationale – in law or in fact – that justifies their retention of stolen money.”

The opposition brief submits evidence – including information and testimony presented for the first time – which substantiates the Trustee’s allegations against the Sterling Defendants, including that they disregarded warnings from trusted advisors and their own suspicions that BLMIS might be a fraud, because they were “fixated on continuing to profit from their access to Madoff and his returns.”

“The law does not permit ‘bad faith’ investors to retain money they received from an enterprise after indicia of possible fraud becomes apparent,” said Fernando A. Bohorquez, Jr., counsel to the Trustee and a partner at Baker & Hostetler LLP. “Even if the Sterling Defendants did not specifically know that BLMIS was a Ponzi scheme, they cannot keep the hundreds of millions of dollars in principal transfers they received under circumstances indicating that they should have known of possible fraud at BLMIS.”

The Sterling Defendants must return to the Trustee all of the money that they received from BLMIS if they were on notice of facts suggesting that BLMIS might be a fraud, but failed to conduct a diligent investigation. The Trustee’s pre-complaint investigation yielded evidence that shows that the Sterling Defendants were aware that BLMIS might have been a fraud but failed to investigate, including:

- In 2001, the Sterling Partners explored purchasing “fraud insurance” for their BLMIS Investments that would cover a Ponzi Scheme;
- Sterling Partner David Katz’s own testimony that by 2002, he was “screaming for diversification” of the Sterling Partners’ investments away from Madoff because “we don’t know what he does” and so created their own hedge fund, Sterling Stamos, to achieve “Madoff-like returns”;
- Testimony of one of the Sterling Partners that he had heard Madoff might be front-running, which he understood meant that Madoff might be taking “information and us[ing] it illegally ... to his own benefit or to benefit his clients”;
- Testimony that the Sterling Partners were warned by their hedge fund business partners of the danger that their hundreds of millions of dollars at BLMIS could be frozen if there were an investigation into Madoff’s operation.

Sterling Stamos Documents and Testimony Show that the Sterling Partners Were Warned

Of particular note, the opposition brief provides more detail from the testimony of Peter Stamos, the chief executive officer of Sterling Stamos, the hedge fund co-founded by Mr. Stamos and the Sterling Partners. After describing his high opinion of Madoff, Peter Stamos in the very next breath stated that Sterling Stamos’s due diligence protocols would have “stopped [Madoff] at the door” and that he conveyed this information to a Sterling Partner.

Within days of the collapse of BLMIS, there were written communications from Sterling Stamos stating that they had recommended to the Sterling Partners for years that they should have taken their money out of BLMIS, but that they had refused to do so despite these warnings. In particular, a December 2008 email by Sterling Stamos's chief investment strategist read: "*In fact, we had recommended to them [Sterling Partners] to redeem [from BLMIS] for years but they kept their investment independent of our recommendation.*"

Before the collapse of the Madoff Ponzi scheme, other credible investment advisors expressed similar misgivings to the Sterling Partners about Madoff, including:

- A Merrill Lynch executive who told Saul Katz that Madoff would not pass Merrill Lynch's due diligence process;
- A consultant to the Sterling Defendants who told Saul Katz that he "couldn't make Bernie's math work" and "Something wasn't right."

"Instead of listening to the advice of their own, hand-picked hedge fund managers and other advisors, the Sterling Defendants restructured Sterling Stamos to accommodate Madoff's unorthodox demands for secrecy," said Mr. Sheehan. "Peter Stamos's testimony confirms that, to appease Madoff's desire to avoid disclosures regarding the Sterling Partners' investments with BLMIS, Sterling Stamos's operations and management were entirely restructured at great time and expense."

Bayou Fund Ponzi Scheme – A Lesson Ignored

In addition to warnings from experienced investment advisors, the Sterling Partners had previous experience with another Ponzi scheme in 2005. The Trustee's opposition brief details the lessons that the Sterling Partners should have learned from the Bayou Fund Ponzi scheme and that they should have applied to Madoff, but deliberately failed to do so.

"The facts are undeniable and inescapable. The Sterling Partners used their BLMIS accounts and the consistent, steady returns as a source of liquidity for their various businesses, including the Mets. They also used their BLMIS accounts for leverage, borrowing against them to obtain additional capital which they then reinvested into their BLMIS accounts to double their returns," said Mr. Sheehan. "As our evidence shows, the Sterling Defendants were aware of and ignored indicia of fraud, despite a series of escalating warnings about Madoff. Of this there is no doubt."

The Sterling complaint was initially filed under seal on December 7, 2010 in the United States Bankruptcy Court for the Southern District of New York. The original complaint was unsealed on February 4, 2011, at the Trustee's request, and amended on March 18, 2011.

A copy of the opposition brief and other motions in this matter are available on the Trustee's website at www.madofftrustee.com or on the Bankruptcy Court's website at www.nysb.uscourts.gov; Docket No. 10-5287 (BRL). The Bankruptcy Court will hold a hearing on the Sterling Defendants' motion on Wednesday, June 29, 2011.

In addition to Mr. Sheehan and Mr. Bohorquez, the Trustee acknowledges the contributions of the Baker & Hostetler attorneys who worked on this filing: Lauren Resnick, Regina Griffin, Tracy Cole, Tom Warren, Keith Murphy, Kathryn Zunno, George Klidonas, and Amanda Fein.

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