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Statement from the office of the SIPA Trustee for the liquidation of Bernard L. Madoff Investment Securities LLC

Attributable to Amanda Remus, spokeswoman for the SIPA Trustee & Counsel at Baker Hostetler:

On February 9, 2012, Counsel to SIPA Trustee, Irving H. Picard, filed on his behalf **the Trustee's Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment** with regard to Picard v. Katz, et al. with the United States District Court for the Southern District of New York.

This memorandum of law in opposition to the Defendants' motion for summary judgment first requests that the Defendants' motion for summary judgment be denied. It then sets forth the factual issues that would lead a jury to conclude that the Defendants were willfully blind according to the standards set forth by the District Court for this proceeding.

From the Trustee's Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment:

After more than fifteen years of investing with BLMIS, the Sterling Partners had by the early 2000s become hooked on Madoff's guaranteed returns.

The Sterling Partners ignored amassing red flags of fraud concerning their Madoff investments, including:

- that in 2001, financial professionals were publicly expressing skepticism about Madoff's investment strategy and returns
- that in 2001, they had conversations with another Madoff investor about procuring insurance for their Madoff accounts that would cover fraud including a Ponzi scheme
- warnings that Madoff could be either a fraud or a fiction
- warnings that Madoff could be illegally front-running to supplement his returns
- warnings that Madoff was unique in the industry because he self-cleared, self-executed and self-custodied his transactions
- warnings that Madoff investments were rejected by Merrill Lynch's due diligence
- warnings that Madoff lacked transparency, and therefore would not pass Sterling Stamos' due diligence process

- warnings Madoff's returns were not correlated to the market or to his purported strategy
- knowledge that Madoff's auditor was a red flag

Every day they remained invested with Madoff, and every time a new warning or red flag of fraud presented itself, they had a decision to make. Their choices were to: 1) divest themselves from their Madoff investments, like their business partners had done; 2) conduct due diligence into the relevant red flags, and accept the risk of financial undoing if the fraud were confirmed; or 3) turn a blind eye, and continue to invest.

History has shown what the Sterling Partners chose every time: not only did they choose to continue to invest; they continued to "double-up," work the Madoff "vig," and to increase their leveraged exposure to Madoff.

The Sterling Partners had become utterly dependent on Madoff's investment returns, which over time had grown to become the very cornerstone of their business plans and personal finances. Moreover, they had become over-dependent upon their BLMIS accounts to secure hundreds of millions of dollars in bank loans—loans as to which, as they admit, could be in default upon just an investigation into BLMIS.

Additional February 9, 2012 filings associated with the Trustee's Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment:

- 1) The Trustee's Statement of Additional Material Facts That Are Undisputed Or As To Which There Exists Genuine Issues To Be Tried**
- 2) The Trustee's Response to Defendants' Statement of Undisputed Material Facts Pursuant to Local Rule 56.1(b)**

Baker & Hostetler Counsel to the SIPA Trustee who work on Picard v. Saul Katz et al. include:

David Sheehan (NY-Partner), Fernando Bohorquez (NY-Partner), Regina Griffin (NY-Partner), Lauren Resnick (NY-Partner), Mark Kornfeld (NY-Partner), Timothy Susanin (NY-Partner), Tracy Cole (NY-Partner), Karin Scholz Jenson (Denver-Partner), Kathryn Zunno (NY-Associate), Jody Schechter (NY-Associate), Stacey Bell (NY-Associate), Melissa Kosack (NY-Associate), Amanda Fein (NY-Associate), Brian Song (NY-Associate), Marco Molina (NY-Associate), Madiha Zuberi (NY-Associate) and Jacqlyn Rovine (NY-Associate).

All of the above filings and their respective supporting documents and exhibits can be found on the Trustee's website on the court filing tab: www.madofftrustee.com.