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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)

SIPA TRUSTEE FOR MADOFF LIQUIDATION SEEKS SUPREME COURT REVIEW OF SECOND CIRCUIT DECISION REGARDING BANK LIABILITY IN MADOFF PONZI SCHEME

NEW YORK, NEW YORK – October 9, 2013 – Irving H. Picard, SIPA Trustee for the liquidation of Bernard L. Madoff Investment Securities LLC, today filed a petition for a *writ of certiorari* with the Supreme Court of the United States seeking a review of the June 20, 2013 Second Circuit decision denying the SIPA Trustee's standing to pursue cases seeking billions of dollars in damages from the international financial institutions that facilitated Madoff's fraud, including JPMorgan Chase & Co., UBS, and HSBC.

Today's filing alleges that the Madoff Ponzi scheme "… could not have persisted for so long, or defrauded so many of so much, without a network of financial institutions, feeder funds, and individuals who participated in his fraud or acquiesced in it – just like any large-scale financial fraud. Those parties, which include the respondents in this case, took millions in fees in exchange for facilitating the world's largest-ever Ponzi scheme. They are as responsible as Madoff for the enormous magnitude of customer losses, which it is now the Trustee's obligation to make good."

"We believe that the Second Circuit's decision contradicts strong precedents established by several other circuit courts," said David J. Sheehan, Chief Counsel to the SIPA Trustee. "Specifically, these precedents clearly uphold the SIPA Trustee's rights to pursue compensation from any third party that collaborates with a broker to defraud its customers."

"As we state in our filing, the Second Circuit's decision undermines Congress's objectives in enacting SIPA," said David B. Rivkin, Jr., an appellate partner at BakerHostetler and Counsel of Record in the Supreme Court case. "If this decision is allowed to stand, the law governing SIPA liquidations will be in turmoil, making collaboration with future Madoffs risk-free for big financial institutions. In other words, the bad guys win."

"We are asking the Court to grant *certiorari* and we hope the Court's review will give SIPA the force and effect that Congress intended. Our request goes beyond the specific issues of the Madoff case. We want to ensure that, going forward, all investors' funds are safe and protected, and that any entity assisting in a similar fraud is held responsible. The SIPA Trustee seeks to hold banks and financial institutions accountable for enabling criminal actions, and to recover funds to restore the losses suffered by Madoff victims," said Mr. Sheehan.

The petition filed today seeks review of three rulings by the Second Circuit:

- First, despite Congress's decision to provide the Securities Investor Protection Corporation (SIPC) a right to step into the shoes of customers to whom it advanced funds and sue to recover that money (a legal doctrine known as "subrogation"), the Second Circuit held that SIPC's subrogation rights are limited to customers' claims against the failed – and inevitably insolvent – brokerage's estate. This evisceration of SIPC's subrogation rights conflicts with decisions of the Third and Sixth Circuits.

- Second, despite Congress's directive that SIPA trustees investigate the circumstances of a broker's failure and muster assets necessary to make customers whole, the Second Circuit held that SIPA's statutory silence on obtaining contribution payments from parties jointly responsible for customers' injuries overrides any state law that provides trustees a right of contribution. This decision rejects the Court's standard approach to preemption, leaves a SIPA trustee powerless to obtain compensation from the promoters and servicers that enable a Ponzi scheme and conflicts with decisions of the Fourth and Eighth Circuits. The Second Circuit's decision puts SIPC and the SIPA Trustee on the hook for injuries caused, at least in part, by third parties, with no ability to hold those parties accountable for their conduct.

- Third, despite Congress's decision to empower trustees under SIPA or the Bankruptcy Code with all "the rights and powers" of a generalized creditor of a bankruptcy estate, the Second Circuit held that a trustee lacks standing to bring claims that are common to all customers or creditors by dint of their status as such. The court's denial of a trustee's ability to bring suit against parties that wrongfully acted to hasten or deepen a bankruptcy, thereby injuring all customers or creditors equally, breaks with decisions of the First and Seventh Circuit.

Mr. Sheehan noted that the SIPA Trustee continues to pursue more than $4 billion in bankruptcy claims against these financial institution defendants that the District Court returned to the United States Bankruptcy Court in 2011 and which are now in active litigation.

The financial institution respondents include the following:

- The defendants in the first action (collectively, "JPM") are JPMorgan Chase & Co. and its affiliates JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC, and J.P. Morgan Securities Ltd.

- The defendants in the second action ("UBS" and "Access") are Swiss bank UBS AG ("UBS") and related entities and individuals, and Access International Advisors LLC ("Access") and related entities and individuals.

- The "HSBC" defendants in the third action are HSBC Bank PLC and related affiliates. The "Unicredit" defendants in the third action are Unicredit S.p.A. and its affiliates Unicredit Bank Austria AG, Pioneer Alternative Investment Management Limited, and Alpha Prime Fund Limited.

In addition to Messrs. Sheehan and Rivkin, attorneys who worked on this petition on behalf of the SIPA Trustee include: Oren Warshavsky, Lee A. Casey, Mark W. DeLaquil, Andrew M. Grossman and Seanna Brown.

Further information on the ongoing Madoff Recovery Initiative and a copy of the SIPA Trustee's *writ of certiorari* filing can be found on the SIPA Trustee's website: www.madofftrustee.com.

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