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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 09-01789 (BRL)

SIPA Liquidation

**AMENDED OBJECTION TO  
TRUSTEE'S DETERMINATION OF  
CLAIM**

Donald A. Benjamin hereby objects to the Notice of Trustee's Determination of Claim dated August 28, , 2009 and states as follows:

**Background facts**

1. On January 4, 1993, Benjamin established an account with Bernard L. Madoff Investment Securities LLC ("Madoff") designated Account No. 1CM006 (the "Account").
2. During the period from January 4, 1993 through January 4, 2007, Benjamin deposited a total of \$3,490,000 into the Account and withdrew a total of \$4,560,000. See Exh. A at 2 -3.
3. The market value of the securities in the Account as of November 30, 2008 was \$5,807,135.56. See Exh. B.

4. Throughout the entire period that Benjamin had the Account, he paid taxes on the income earned in the Account annually, based upon the statements provided to him by Madoff in the regular course of Madoff's business.

5. On January 9, 2009, Benjamin sent a SIPC claim to Picard for the Account asserting a claim for securities in the amount of \$5,807,135.56 based upon the November 30, 2008 Madoff statement.

6. On August 28, 2009, Picard sent Benjamin a determination letter (the "Determination Letter") with respect to the Account, rejecting the claim for securities based upon the November 30, 2008 balance and claiming that Benjamin is not entitled to any SIPC insurance, stating that because "you have withdrawn more than was deposited into your account, you do not have a positive "net equity" in your account and you are not entitled to an allowed claim in the BLMIS liquidation proceeding. Exh. A at 2.

7. The methodology by which Picard reached this conclusion was to go back to the opening of the Account in 1993 and net out all deposits and withdrawals, giving no credit for the appreciation in the account or for a reasonable rate of return on Benjamin's money.

### **Grounds for objection**

#### **A. Picard has failed to comply with the Court's December 23, 2008 Order**

8. The Determination Letter fails to comply with the Court order dated December 23, 2008 which directs Picard to satisfy customer claims and deliver securities in accordance with "the Debtor's books and records." December 23, 2008 Order at 5 (Docket No. 12). The November 30, 2008 account statement generated by Madoff is reflective of "the Debtor's books and records" by which Picard is bound, absent proof that Benjamin did not have a "legitimate expectation" that the balance on the Account statement represented his property. In fact, in each

year that he had the Account, Benjamin paid ordinary income taxes on the appreciation in the Account, which were duly accepted from the federal and state taxing authorities. Benjamin would not have paid those sums if he did not believe that the assets in the Account belonged to him.

9. Picard has failed to state a basis in the Determination Letter for the position he has taken. Indeed, he has pointed to no provision of the Securities Investor Protection Act (“SIPA”) which authorizes him to limit SIPC insurance to customers who have a positive net investment on his “cash in/cash out” valuation. Thus, he has not complied with the requirement that an “objection to a claim should . . . meet the [pleading] standards of an answer. It should make clear which facts are disputed; it should allege facts necessary to affirmative defenses; and it should describe the theoretical bases of those defenses.” Collier on Bankruptcy ¶ 3007.01(3)(15<sup>th</sup> ed.); *In re Enron Corp.*, No. 01-16034, 2003 Bankr. LEXIS 2261, at \*25 (B.S.D.N.Y. Jan. 13, 2003).

**B. Picard has violated the requirement that he honor a customer’s “legitimate expectations”**

10. The legislative history of SIPA makes clear that Congress’ intent was to protect a customer’s “legitimate expectations.” For example, Congressman Robert Eckhardt commented when SIPA was amended in 1978:

One of the greatest shortcomings of the procedure under the 1970 Act, to be remedied by [the 1978 amendments] is the failure to meet legitimate customer expectations of receiving what was in their account at the time of their broker’s insolvency.

\* \* \*

A customer generally expects to receive what he believes is in his account at the time the stockbroker ceases business. But because securities may have been lost, improperly hypothecated, misappropriated, never purchased, or even stolen, this

is not always possible. Accordingly, [when this is not possible, customers] will receive cash based on the market value as of the filing date.

H.R. Rep. 95-746 at 21.

11. SIPC's Series 500 Rules, 17 C.F.R. 300.500, enacted pursuant to SIPA, provide for the classification of claims in accordance with the "legitimate expectations" of a customer based upon the written transaction confirmations sent by the broker-dealer to the customer.

12. Thus, SIPC is statutorily bound to honor a customer's "legitimate expectations." This was acknowledged by SIPC in a brief it submitted to the Second Circuit in 2006, wherein SIPC assured the appeals court that its policy was to honor the legitimate expectations of investors, even where the broker never purchased the securities. SIPC wrote:

Reasonable and legitimate claimant expectations on the filing date are controlling even where inconsistent with transaction reality. Thus, for example, **where a claimant orders a securities purchase and receives a written confirmation statement reflecting that purchase, the claimant generally has a reasonable expectation that he or she holds the securities identified in the confirmation and therefore generally is entitled to recover those securities (within the limits imposed by SIPA), even where the purchase never actually occurred and the debtor instead converted the cash deposited by the claimant to fund that purchase . . .** [T]his emphasis on reasonable and legitimate claimant expectations frequently yields much greater 'customer' protection than would be the case if transaction reality, not claimant expectations, were controlling, as this Court's earlier opinion in this liquidation well illustrates.

Br. of Appellant SIPC at 23-24 (citing *New Times*)(emphasis added).

13. Picard's position in the Madoff case is contradicted, not only by SIPC's prior treatment of customers in the *New Times* case, but also by a statement that SIPC's general counsel, Josephine Wang, gave to the press on December 16, 2008 wherein Ms. Wang acknowledged that a Madoff customer is entitled to the securities in his account:

Based on a conversation with the SIPC general counsel, Josephine Wang, if clients were presented statements and had reason to believe that the securities were in fact owned, the SIPC will be required to buy these securities in the open market to make the customer whole up to \$500K each. So if Madoff client

number 1234 was given a statement showing they owned 1000 GOOG shares, even if a transaction never took place, the SIPC has to buy and replace the 1000 GOOG shares.

December 16, 2008 Insiders' Blog, [www.occ.treas.gov/ftp/alert/2008-37.html](http://www.occ.treas.gov/ftp/alert/2008-37.html).

14. As indicated in paragraph 17 *infra*, in the *New Times* case, SIPC voluntarily recognized its obligation under SIPA to pay customers up to \$500,000 based on their final brokerage statement, inclusive of appreciation in their accounts, despite the fact that the broker had operated a Ponzi scheme for a period of approximately 17 years and had never purchased the securities reflected on the customers' monthly statements. In fact, SIPC's president, Stephen Harbeck, assured the *New Times* bankruptcy court that customers would receive securities up to \$500,000 including the appreciation in their accounts.

HARBECK: . . . if you file within sixty days, you'll get the securities, without question. Whether – if they triple in value, you'll get the securities . . . Even if they're not there.

COURT: Even if they're not there.

HARBECK: Correct.

COURT: In other words, if the money was diverted, converted –

HARBECK: And the securities were never purchased.

COURT: Okay.

**HARBECK: And if those positions triple we will gladly give the people their securities positions.**

Tr. at 37-39, *In re New Times Securities Services, Inc.*, No 00-8178 (B.E.D.N.Y. 7/28/00)

(emphasis added).

**C. Without legal authority and solely to enrich SIPC, Picard has invented his own definition of “net equity”**

15. SIPA defines “net equity” as the value of the securities positions in the customer’s account as of the SIPA filing date, less any amount the customer owes the debtor.

The term ‘net equity’ means the dollar amount of the account or accounts of a customer, to be determined by –

(A) calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date, all securities positions of such customer . . . ; minus

(B) any indebtedness of such customer to the debtor on the filing date . . .

15 U.S.C. § 78lll(11).

16. SIPA specifically prohibits SIPC from changing the definition of “net equity.” 15 U.S.C. § 78ccc(b)(4)(A).

17. The Second Circuit has recognized that:

Each customer’s “net equity” is “the dollar amount of the account or accounts of a customer, to be determined by calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date, all securities positions of such customer” [corrected for] any indebtedness of such customer to the debtor on the filing date.

*In re New Times Securities Services, Inc.*, 371 F. 3d 68, 72 (2d Cir. 2004); *See also, In re Adler Coleman Clearing Corp.*, 247 B.R. 51, 62 N. 2 (B.S.D.N.Y. 1999)(“Net equity’ is calculated as the difference between what the debtor owes the customer and what the customer owes the debtor on the date the SIPA proceeding is filed.”).

18. In derogation of his obligations to carry out the provisions of SIPA, and solely to enrich SIPC, Picard has created his own definition of “net equity.” Picard has asserted that he has a right to recognize investors’ claims only for the amount of their net investment, disregarding all appreciation in their accounts. By this procedure, Picard would avoid paying SIPC insurance to the thousands of elderly, long-term Madoff investors who, like Benjamin, have depended upon their Madoff investments for their daily living expenses. He also would be

able to reduce all claims to the net investment, thus enhancing SIPC's subrogation claim for reimbursement of the insurance it does pay to customers.

19. Stephen Harbeck, the President of SIPC, justifies this conduct by claiming that:

Using the final statements created by Mr. Madoff as the sole criteria for what a claimant is owed perpetuates the Ponzi Scheme. It allows the thief . . . Mr. Madoff . . . to determine who receives a larger proportion of the assets collected by the Trustee.

20. Harbeck's statement is a rationalization of what appears to be SIPC's goal, *i.e.*, to save money for the brokerage community at the expense of innocent investors who relied upon the SEC's competence and integrity in investigating Madoff seven times over an 11-year period.

21. After eight months of his tenure, Picard has identified only a few Madoff investors who **might not** have had a "legitimate expectation" that the trade confirmations and account statements they received were accurate. For example, Picard has sued two Madoff customers, Stanley Chais and Jeffrey Picower who, Picard has alleged, took out of Madoff \$6 billion more than they invested. Picard has further alleged that these two investors received returns in their accounts of 100 – 400% and that Madoff back-dated \$100 million losses in their accounts. Assuming these allegations are true, Chais and Picower were Madoff's co-conspirators and certainly could not have had a "legitimate expectation" that their accounts were genuine.

22. However, the fact that a few out of more than 15,400 Madoff investors may have been Madoff's co-conspirators does not justify SIPC's depriving the more than 15,397 remaining, totally innocent investors of their statutory maximum payment of \$500,000 in SIPC insurance.

23. Benjamin, like thousands of other investors, received monthly statements from Madoff indicating returns on his Madoff investment in the range, in the past few years, of 9 –

11% per year. Benjamin had entered into a standard brokerage agreement with Madoff, a licensed SEC-regulated broker-dealer, pursuant to which the Account had a specific number; he received on a monthly basis trade confirmations for every securities transaction in the Account which accurately set forth the names and prices of securities indicating the purchase and sale of Fortune 100 company stocks and the purchase of US Treasury securities. There is no basis to claim that Benjamin did not have a “legitimate expectation” that the assets reflected on the Account statements sent to him by Madoff belonged to him. Thus, Benjamin is entitled to a claim for \$5,807,135.56 as reflected on the November 30, 2008 Madoff statement.

**D. Benjamin is entitled to prejudgment interest on their investment and profits.**

24. Under New York law, which is applicable here, funds deposited with Madoff are entitled to interest. *See, e.g.*, N.Y.C.P.L.R. § 5004; N.Y. Gen. Oblig. § 5-501, *et seq.* Moreover, since Madoff converted Benjamin’s funds, that fact also entitles him to prejudgment interest. *See, e.g., Steinberg v. Sherman*, No. 07-1001, 2008 U.S. Dist. LEXIS 35786, at \*14-15 (S.D.N.Y. May 2, 2008)(“Causes of action such as . . . conversion and unjust enrichment qualify for the recovery of prejudgment interest.”); *Eighteen Holding Corp. v. Drizin*, 701 N.Y.S. 2d 427, 428 (1<sup>st</sup> Dept. 2000)(awarding prejudgment interest on claims for unjust enrichment and conversion).

25. Although it is not legally relevant, Picard cannot prove that Madoff earned no money on Benjamin’s investment. To the extent the funds were deposited into a bank, they earned interest while on deposit. Madoff disbursed customer funds to favored customers, to family members, and for other purposes. Those funds may have yielded substantial profits to which Benjamin and other customers are entitled once the ultimate recipients of Madoff’s thievery are known.



**E. Picard has no right to void alleged fraudulent transfers beyond the period of the statute of limitations**

26. Although Picard has not explained the legal basis for his position that SIPC is not liable to Benjamin for \$500,000 of insurance with respect to the Account, he presumably is relying upon the avoidance provisions of the Bankruptcy Code, *i.e.*, 11 U.S.C. §§ 544, 546 and 547.

27. However, Picard has no right to utilize these provisions for the purpose of enriching SIPC at Benjamin's expense. The legislative history of these provisions makes clear that the purpose of a trustee's avoidance powers is to assure an equal distribution of a debtor's assets among its creditors. *See, e.g., 5 Collier on Bankruptcy* ¶ 547.01 (15<sup>th</sup> ed. 2008); *see also In re Dorholt, Inc.*, 224 F.3d 871, 873 (8<sup>th</sup> Cir. 2000) (preferential transfer rule "is intended to discourage creditors from racing to dismember a debtor sliding into bankruptcy and to promote equality of distribution to creditors in bankruptcy"); *Pereira v. United Jersey Bank, N.A.*, 201 B.R. 644, 656 (B.S.D.N.Y. 1996) (The purpose of Section 547 is to discourage creditors from racing to the courthouse to dismember the debtor and, "[s]econd, and more important, the preference provisions facilitate the prime bankruptcy policy of equality of distribution among creditors of the debtor. Any creditor that received a greater payment than others of his class is required to disgorge so that all may share equally") (quotations omitted).

28. Here, however, Picard is not acting to assure equal distribution among prepetition creditors. On the contrary, he is simply acting as SIPC's puppet in depriving Benjamin of the \$500,000 in SIPC insurance to which he is statutorily entitled.

29. Moreover, even assuming, *arguendo*, that Picard had a right to utilize his "cash in/cash out" methodology to limit SIPC's liability to Benjamin, Picard cannot possibly circumvent the statute of limitations in the fraudulent conveyance laws to offset withdrawals

from the Account which pre-date the limitations period. At best, then, from Picard's perspective, he is bound by the balance in the Account as of the first day of the limitations period. That balance, indisputably, constitutes Benjamin's money.

**G. Picard has breached his fiduciary duty to Benjamin**

30. Picard has a fiduciary duty to Benjamin as a customer of Madoff by ignoring his statutory obligation to promptly pay \$500,000 in SIPC insurance to Benjamin based upon his November 30, 2008 statement.

**Conclusion**

31. Benjamin is entitled to an order compelling SIPC to immediately pay him \$500,000 in SIPC insurance with respect to the Account.

32. Benjamin is entitled to have his claim recognized in the amount of \$5,807,135.56 consistent with the November 30, 2008 statement from Madoff.

33. Benjamin is entitled to compensatory damages for Picard's breach of fiduciary duty in the amount, at least, of postjudgment interest from February 11, 2009 to the date he finally obtains payment of SIPC insurance.

34. SIPC is liable to Benjamin for compensatory damages for failure to pay \$500,000 in SIPC insurance by February 11, 2009.

September 1, 2009

PHILLIPS NIZER LLP  
By s/s Helen Davis Chaitman

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New York, NY 10103-0084  
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hchaitman@phillipsnizer.com

Attorneys for Donald Benjamin

# EXHIBIT A

**BERNARD L. MADOFF INVESTMENT SECURITIES LLC**

In Liquidation

**DECEMBER 11, 2008**

**NOTICE OF TRUSTEE'S DETERMINATION OF CLAIM**

August 28, 2009

Donald A. Benjamin  
152 Darters Lane  
Manhasset, NY 11030

Dear Mr. Benjamin:

**PLEASE READ THIS NOTICE CAREFULLY.**

The liquidation of the business of BERNARD L. MADOFF INVESTMENT SECURITIES LLC ("BLMIS") is being conducted by Irving H. Picard, Trustee under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et seq.* ("SIPA"), pursuant to an order entered on December 15, 2008 by the United States District Court for the Southern District of New York.

The Trustee has made the following determination regarding your claims on BLMIS Account No. ICM006 designated as Claim Number 141, Claim Number 100119 and Claim Number 100134 (the latter two of which are duplicative of Claim Number 141) and are combined ("Combined Claim") for purposes of this determination. This letter shall serve as the Trustee's determination with respect to the Combined Claim:

Your Combined Claim for securities is **DENIED**. No securities were ever purchased for your account.

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<sup>1</sup> Section 78III(7)(B) of SIPA states that the filing date is "the date on which an application for a protective decree is filed under 78eee(a)(3)," except where the debtor is the subject of a proceeding pending before a United States court "in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term 'filing date' means the date on which such proceeding was commenced." Section 78III(7)(B). Thus, even though the Application for a protective decree was filed on December 15, 2008, the Filing Date in this action is on December 11, 2008.

Further, based on the Trustee's analysis, the amount of money you withdrew from your account at BLMIS (total of \$4,560,000.00), as more fully set forth in Table 1 annexed hereto and made a part hereof, is greater than the amount that was deposited with BLMIS for the purchase of securities (total of \$3,490,000.00). As noted, no securities were ever purchased by BLMIS for your account. Any and all profits reported to you by BLMIS on account statements were fictitious.

Since there were no profits to use either to purchase securities or to pay you any money beyond the amount that was deposited into your BLMIS account, the amount of money you received in excess of the deposits in your account (\$1,070,000.00) was taken from other customers and given to you. Accordingly, because you have withdrawn more than was deposited into your account, you do not have a positive "net equity" in your account and you are not entitled to an allowed claim in the BLMIS liquidation proceeding. Therefore, your claim is **DENIED** in its entirety.

DATE	TRANSACTION DESCRIPTION	AMOUNT	ADJUSTED AMOUNT
1/4/1993	CHECK	\$100,000.00	\$100,000.00
4/1/1993	CHECK	\$50,000.00	\$50,000.00
8/12/1994	CHECK	\$50,000.00	\$50,000.00
12/14/1994	CHECK	\$95,000.00	\$95,000.00
1/13/1995	CHECK	\$150,000.00	\$150,000.00
8/31/1995	Check	\$75,000.00	\$75,000.00
1/11/1996	CHECK	\$740,000.00	\$740,000.00
4/16/1996	CHECK	\$400,000.00	\$400,000.00
11/20/1997	CHECK	\$300,000.00	\$300,000.00
6/16/1998	CHECK	\$250,000.00	\$250,000.00
11/16/1998	CHECK	\$300,000.00	\$300,000.00
8/20/1999	CHECK	\$80,000.00	\$80,000.00
12/30/2005	TRANS FROM 1CM78330	\$2,484.93	\$0.00
2/15/2006	TRANS FROM 1CM78330	\$437.21	\$0.00
1/4/2007	CHECK	\$900,000.00	\$900,000.00
<b>Total Deposits:</b>		<b>\$3,492,922.14</b>	<b>\$3,490,000.00</b>

DATE	TRANSACTION DESCRIPTION	AMOUNT	ADJUSTED AMOUNT
10/18/1996	CHECK	(\$150,000.00)	(\$150,000.00)
1/2/1997	CHECK	(\$100,000.00)	(\$100,000.00)
4/1/1997	CHECK	(\$100,000.00)	(\$100,000.00)
7/1/1997	CHECK	(\$100,000.00)	(\$100,000.00)
6/2/1999	CHECK	(\$50,000.00)	(\$50,000.00)
10/20/1999	CHECK	(\$85,000.00)	(\$85,000.00)
12/7/1999	CHECK	(\$50,000.00)	(\$50,000.00)
5/25/2000	CHECK	(\$100,000.00)	(\$100,000.00)

7/18/2000	CHECK	(\$30,000.00)	(\$30,000.00)
8/18/2000	CHECK	(\$75,000.00)	(\$75,000.00)
10/18/2000	CHECK	(\$40,000.00)	(\$40,000.00)
12/27/2000	CHECK	(\$250,000.00)	(\$250,000.00)
10/22/2001	CHECK	(\$25,000.00)	(\$25,000.00)
10/23/2001	CHECK	(\$25,000.00)	(\$25,000.00)
6/4/2002	CHECK	(\$250,000.00)	(\$250,000.00)
4/11/2003	CHECK	(\$300,000.00)	(\$300,000.00)
10/10/2003	CHECK	(\$100,000.00)	(\$100,000.00)
12/4/2003	CHECK WIRE	(\$750,000.00)	(\$750,000.00)
4/27/2004	CHECK	(\$70,000.00)	(\$70,000.00)
8/3/2004	CHECK	(\$60,000.00)	(\$60,000.00)
10/14/2004	CHECK	(\$25,000.00)	(\$25,000.00)
12/13/2004	CHECK WIRE	(\$500,000.00)	(\$500,000.00)
12/19/2005	CHECK WIRE	(\$500,000.00)	(\$500,000.00)
8/24/2006	CHECK	(\$100,000.00)	(\$100,000.00)
7/11/2007	CHECK	(\$250,000.00)	(\$250,000.00)
3/12/2008	CHECK WIRE	(\$300,000.00)	(\$300,000.00)
6/3/2008	CHECK	(\$75,000.00)	(\$75,000.00)
10/14/2008	CHECK	(\$100,000.00)	(\$100,000.00)
<b>Total Withdrawals:</b>		(\$4,560,000.00)	(\$4,560,000.00)
<b>Total deposits less withdrawals:</b>		(\$1,067,077.86)	(\$1,070,000.00)

As reflected in Table 1, certain of the transfers into or out of your account have been adjusted. As part of the Trustee's analysis of accounts, the Trustee has assessed accounts based on a money in/money out analysis (i.e., has the investor deposited more or less than he or she withdrew from BLMIS). This analysis allows the Trustee to determine which part of an account's balance is originally invested principal and which part is fictitious gains that were fabricated by BLMIS. A customer's allowed claim is based on the amount of principal in the customer's account.

When ever a customer requested a transfer from one account to another, the Trustee analyzed whether the transferor account had principal in the account at the time of the transfer. The available principal in the account was transferred to and credited in the transferee account. Thus, the reason that the adjusted amount of transferred deposits in Table 1 is less than the purported transfer amount is that the transferor account did not have sufficient principal available to effectuate the full transfer. The difference between the purported transfer amount and the adjusted transfer amount is the amount of fictitious gain that was transferred to or from your account. Under the money in/money out analysis, the Trustee does not give credit for fictitious gains in settling your allowed claim.

Should a final and unappealable court order determine that the Trustee is incorrect in his interpretation of "net equity" and its corresponding application to the determination of customer claims, the Trustee will be bound by that order and will apply it retroactively to all previously

determined customer claims in accordance with the Court's order. Nothing in this Notice of Trustee's Determination of Claim shall be construed as a waiver of any rights or claims held by you in having your customer claim re-determined in accordance with any such Court order.

Nothing in this Notice of Trustee's Determination of Claim shall be construed as a waiver of any rights or claims held by the Trustee against you.

**PLEASE TAKE NOTICE:** If you disagree with this determination and desire a hearing before Bankruptcy Judge Burton R. Lifland, you **MUST** file your written opposition, setting forth the grounds for your disagreement, referencing Bankruptcy Case No. 08-1789 (BRL) and attaching copies of any documents in support of your position, with the United States Bankruptcy Court and the Trustee within **THIRTY DAYS** after August 28, 2009, the date on which the Trustee mailed this notice.

**PLEASE TAKE FURTHER NOTICE:** If you do not properly and timely file a written opposition, the Trustee's determination with respect to your claim will be deemed confirmed by the Court and binding on you.

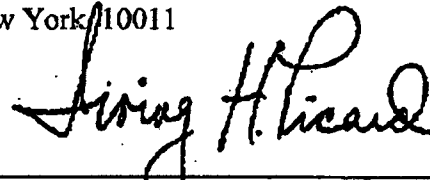
**PLEASE TAKE FURTHER NOTICE:** If you properly and timely file a written opposition, a hearing date for this controversy will be obtained by the Trustee and you will be notified of that hearing date. Your failure to appear personally or through counsel at such hearing will result in the Trustee's determination with respect to your claim being confirmed by the Court and binding on you.

**PLEASE TAKE FURTHER NOTICE:** You must mail your opposition, if any, in accordance with the above procedure, to each of the following addresses:

Clerk of the United States Bankruptcy Court for  
the Southern District of New York  
One Bowling Green  
New York, New York 10004

and

Irving H. Picard, Trustee  
c/o Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10011



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Irving H. Picard

Trustee for the Liquidation of the Business of  
Bernard L. Madoff Investment Securities LLC

cc: Helen Davis Chaitman, Esq.  
Phillips Nizer LLP  
666 Fifth Avenue  
New York, New York 10103-0084



# **EXHIBIT B**

**BERNARD L. MADOFF**  
INVESTMENT SECURITIES LLC  
New York □ London

885 Third Avenue  
New York, NY 10022  
(212) 230-2424  
800 334-1343  
Fax (212) 838-4061

5,807,000  
5,693  
114

Madoff Securities International Limited  
12 Berkeley Street  
Mayfair, London W1J 8DT  
Tel 020 7493 6222

DONALD A BENJAMIN

152 DARTERS LANE  
MANHASSET NY 11030

PERIOD ENDING  
11/30/08

PAGE  
1

YOUR ACCOUNT NUMBER  
1-CM006-3-0

YOUR TAX PAYER IDENTIFICATION NUMBER  
\*\*\*\*\*0999

DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
				BALANCE FORWARD		355,607.91	
11/12	3,250		2204	WAL-MART STORES INC	55.830	181,577.50	
11/12	2,125		2706	INTERNATIONAL BUSINESS MACHS	87.270	185,533.75	
11/12	7,875		6530	EXXON MOBIL CORP	72.880	574,245.00	
11/12	8,625		7032	INTEL CORP	14.510	125,493.75	
11/12	4,125		11358	JOHNSON & JOHNSON	59.580	245,932.50	
11/12	5,625		15684	J.P. MORGAN CHASE & CO	38.530	216,956.25	
11/12	3,000		20009	COCA COLA CO	44.660	134,100.00	
11/12	1,750		24335	MCDONALDS CORP	55.370	96,967.50	
11/12	3,250		28661	MERCK & CO	28.550	92,917.50	
11/12	11,875		32987	MICROSOFT CORP	21.810	259,468.75	
11/12	6,000		37313	ORACLE CORPORATION	17.300	104,040.00	
11/12	2,375		50291	PEPSICO INC	56.410	134,068.75	
11/12	1,375		50793	APPLE INC	100.780	138,627.50	
11/12	10,125		54617	PFIZER INC	16.940	171,922.50	
11/12	2,375		55119	ABBOTT LABORATORIES	54.610	129,793.75	
11/12	4,500		58943	PROCTER & GAMBLE CO	64.080	288,540.00	
11/12	1,625		59445	AMGEN INC	59.160	96,200.00	
11/12	3,125		63269	PHILLIP MORRIS INTERNATIONAL	43.600	136,375.00	
11/12	7,500		63771	BANK OF AMERICA	21.590	162,225.00	
11/12	2,500		67595	QUALCOMM INC	33.770	84,525.00	
11/12	8,125		68097	CITI GROUP INC	12.510	101,968.75	
11/12	1,875		71921	SCHLUMBERGER LTD	49.480	92,850.00	
11/12	4,500		72423	COMCAST CORP	16.510	74,475.00	
				CL A			
				CONTINUED ON PAGE 2			

PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES

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DONALD A BENJAMIN

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MANHASSET NY 11030

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DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
11/12	8,875		76247	AT&T INC	27	239,980.00	
11/12	2,250		76749	CONOCOPHILIPS	52.510	118,237.50	
11/12	1,500		80573	UNITED PARCEL SVC INC CLASS B	52.040	78,120.00	
11/12	9,125		81075	CISCO SYSTEMS INC	16.730	153,026.25	
11/12	2,625		84899	U S BANCORP	29.530	77,621.25	
11/12	3,125		85401	CHEVRON CORP	73.430	229,593.75	
11/12	1,500		89225	UNITED TECHNOLOGIES CORP	53.160	79,800.00	
11/12	15,875		89727	GENERAL ELECTRIC CO	19.630	312,261.25	
11/12	4,250		93551	VERIZON COMMUNICATIONS	30.410	129,412.50	
11/12	375		94053	GOOGLE	337.400	126,540.00	
11/12	5,250		97877	WELLS FARGO & CO NEW	29.800	156,660.00	
11/12	3,750		98379	HEWLETT PACKARD CO	34.900	131,025.00	
11/12		5,675,000	20490	U S TREASURY BILL DUE 2/12/2009	99.936		5,671,368.00
11/12				2/12/2009 FIDELITY SPARTAN U S TREASURY MONEY MARKET DIV 11/12/08	DIV		10.54
11/12		25,132	15588	FIDELITY SPARTAN U S TREASURY MONEY MARKET	1		25,132.00
11/12	10,179		24957	FIDELITY SPARTAN U S TREASURY MONEY MARKET	1	10,179.00	
11/19				FIDELITY SPARTAN U S TREASURY MONEY MARKET DIV 11/19/08	DIV		1.25

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11/19		10,179	50206	FIDELITY SPARTAN U S TREASURY MONEY MARKET	1		10,179.00
11/19	375,000		54849	U S TREASURY BILL DUE 03/26/2009	99.926	374,722.50	
11/19	9,958		59247	FIDELITY SPARTAN U S TREASURY MONEY MARKET	1	9,958.00	
				NEW BALANCE		704,857.87	
				SECURITY POSITIONS	MKT PRICE		
	8,875			AT&T INC	28.560		
	2,375			ABBOTT LABORATORIES	52.390		
	1,625			AMGEN INC	55.540		
	1,375			APPLE INC	92.670		
	7,500			BANK OF AMERICA	16.250		
	3,125			CHEVRON CORP	79.010		
	9,125			CISCO SYSTEMS INC	16.540		
	8,125			CITI GROUP INC	8.290		
	3,000			COCA COLA CO	46.870		
	4,500			COMCAST CORP	17.340		
	2,250			CL A			
	7,875			CONOCOPHILIPS	52.520		
	15,875			EXXON MOBIL CORP	80.150		
				GENERAL ELECTRIC CO	17.170		
				CONTINUED ON PAGE 4			

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	375			GOOGLE	292.960		
	3,750			HEWLETT PACKARD CO	35.280		
	8,625			INTEL CORP	13.800		
	2,125			INTERNATIONAL BUSINESS MACHS	81.600		
	5,625			J.P. MORGAN CHASE & CO	31.660		
	4,125			JOHNSON & JOHNSON	58.580		
	1,750			MCDONALDS CORP	58.750		
	3,250			MERCK & CO	26.720		
	11,875			MICROSOFT CORP	20.220		
	6,000			ORACLE CORPORATION	16.090		
	2,375			PEPSICO INC	56.700		
	10,125			PFIZER INC	16.430		
	3,125			PHILLIP MORRIS INTERNATIONAL	42.160		
	4,500			PROCTER & GAMBLE CO	64.350		
	2,500			QUALCOMM INC	33.570		
	1,875			SCHLUMBERGER LTD	50.740		
	9,958			FIDELITY SPARTAN	1		
	2,625			U S TREASURY MONEY MARKET			
	1,500			U S BANCORP	26.980		
				UNITED PARCEL SVC INC	57.600		
				CLASS B			
	375,000			U S TREASURY BILL	99.971		
				DUE 03/26/2009			
				3/26/2009			
	1,500			UNITED TECHNOLOGIES CORP	48.530		
				CONTINUED ON PAGE 5			

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	4,250			VERIZON COMMUNICATIONS	32.650		
	3,250			WAL-MART STORES INC	55.880		
	5,250			WELLS FARGO & CO NEW	28.890		
				MARKET VALUE OF SECURITIES			
				LONG			
				SHORT			
				5,892,135.50			

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				YEAR-TO-DATE SUMMARY			
				DIVIDENDS			40,014.95
				GROSS PROCEEDS FROM SALES			39,537,498.16

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DATE	BOUGHT RECEIVED OR LONG	SOLD DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
				BALANCE FORWARD			355,608.00
11/12		125	41639	S & P 100 INDEX	15.800		197,375.00
11/12	125		45965	NOVEMBER 460 CALL		222,625.00	
11/19		125	32070	S & P 100 INDEX	26		324,875.00
11/19	125		36395	DECEMBER 430 CALL		375,125.00	
11/19	125		40720	S & P 100 INDEX	3	37,625.00	
11/19		125	45045	NOVEMBER 460 CALL	37		462,375.00
				NOVEMBER 450 PUT			
				NEW BALANCE			704,858.00
		125		SECURITY POSITIONS	MKT PRICE		
				S & P 100 INDEX	23.300		
	125			DECEMBER 430 CALL			
				S & P 100 INDEX	16.500		
				DECEMBER 420 PUT			
				MARKET VALUE OF SECURITIES			
				LONG			
				SHORT			
				206,250.00			291,250.00-

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hchaitman@phillipsnizer.com  
*Attorneys for Plaintiffs*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 09-01789 (BRL)

SIPA Liquidation

**CERTIFICATE OF SERVICE**

I, Lourdes Blanco, hereby certify that on September 1, 2009 I caused a true and correct copy of the foregoing **Amended Objection to Trustee's Determination of Claim** on behalf of Donald A. Benjamin to be filed electronically with the Court and served upon the parties in this action who receive electronic service through CM/ECF, and served by hand upon:

David J. Sheehan, Esq.  
Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, NY 10111

September 1, 2009

/s/ Lourdes Blanco