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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. 08-01789 (BRL)

SIPA Liquidation

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

Barbara Kotlikoff Harman hereby objects to the Notice of Trustee's Determination of Claim dated May 19, 2010 (the "Determination Letter") and states as follows:

BACKGROUND

1. Barbara Kotlikoff Harman is a "customer" of BLMIS, as defined by the Securities Investor Protection Act ("SIPA"). *See* 15 U.S.C. § 78III(2).

2. On or about April 6, 1990, Barbara Kotlikoff Harman established an account with Bernard L. Madoff Investment Securities, LLC ("BLMIS"), bearing the account number 1-H0008 (the "Initial Account") with a deposit of approximately \$80,000.

3. From the creation of the Initial Account until June of 1997, BLMIS provided regular updates on the status of the Initial Account, including monthly statements, trade confirmations, and quarterly portfolio management reports.

4. On or about June 9, 1997, BLMIS informed Barbara Kotlikoff Harman that BLMIS wished to transfer the entirety of the contents of the Initial Account (the “Account Transfer”) into a new BLMIS account, so as to facilitate a different investment strategy. This transfer was approved, and a new BLMIS account bearing the account number 1-H0099 (the “Account”) was created.

5. As of the time of the Account Transfer, BLMIS reported that the Initial Account contained a total of on or around \$273,398.74.

6. From the creation of the Account until December of 2008, BLMIS provided regular updates on the status of the Account, including monthly statements, trade confirmations, and quarterly portfolio management reports.

7. Toby Harman, Barbara Kotlikoff Harman’s mother-in-law, died in June of 1998. At the time she died, Toby Harman was a customer of BLMIS. After the death of Toby Harman, her BLMIS account was transferred into an account entitled “The Estate of Toby Harman” and then subsequently into an account bearing the account number 1-H0130 entitled “The Toby Harman Trust” (the “Toby Harman Account”).

8. Harry J. Harman, Barbara Kotlikoff Harman’s father-in-law, died in March of 2003. At the time he died, Harry J. Harman was a customer of BLMIS. After the death of Harry J. Harman, his BLMIS account was transferred into an account bearing the account number 1-H0150 entitled “The Estate of Harry J. Harman” (the “Harry J. Harman Account”).

9. The wills of both Toby Harman and Harry J. Harman passed through probate, and, after the death of Harry J. Harman, the assets of both Toby Harman and Harry J. Harman were divided equally between Laurence Harman, the husband of Barbara Kotlikoff Harman, and Robert E. Harman, Laurence Harman’s brother.

10. Thus, it was legally established that Laurence Harman would receive approximately \$421,188.41 of the value held in the Toby Harman Account (the “Toby Harman Bequest”) and approximately \$351,746.18 of the value held in the Harry J. Harman Account (the “Harry J. Harman Bequest”).

11. Rather than take the money due to Laurence Harman in cash, Laurence Harman and Barbara Kotlikoff Harman decided to have both the Toby Harman Bequest and the Harry J. Harman Bequest directly transferred into the Account (each of which is a “Bequest Transfer” and, collectively, the “Bequest Transfers”).

12. The final update regarding the Account sent by BLMIS was a monthly statement dated November 30, 2008 (the “Final Customer Statement”). *See* Exh. A.

13. The Final Customer Statement reflects that the Account contained securities with a market value of \$1,802,563.77. *See* Exh. A.

14. On December 15, 2008, this SIPA liquidation proceeding was commenced and Irving H. Picard, Esq., was appointed as trustee (the “Trustee”). *See* Dec. 15, 2008 Order (Docket No. 1).

15. On December 23, 2008, this Court issued an Order (the “December 23, 2008 Order”) setting a bar date for all claims against BLMIS, including all claims from BLMIS customers. *See* Dec. 23, 2008 Order (Docket No. 12).

16. On January 30, 2009, Barbara Kotlikoff Harman timely filed a claim in the amount of \$1,802,563.77 for the securities in the Account that were reflected in the Final Customer Statement (the “Customer Claim”). *See* Exh. A.

17. The December 23, 2008 Order required that, if the Trustee disagreed with any claims filed by BLMIS customers, the Trustee must “notify such claimant by mail of his

determination that the claim is disallowed, in whole or in part, and the reason therefor[.]” *See* Dec. 23, 2008 Order (Docket No. 12).

18. On March 1, 2010, this Court issued a decision approving the Trustee’s method for calculating the “net equity” owed to each BLMIS customer by reference only to “the amount of cash deposited by the customer into his BLMIS customer account less any amounts already withdrawn by him (the ‘Net Investment Method’).” *See* Mar. 1, 2010 Mem. Decision at 5-6; *see also* 15 U.S.C. § 78III(11) (definition of “net equity”). In so deciding, this Court rejected the “Final Customer Statements” method of calculating “net equity” based on “the amounts reflected on customers’ November 30th Statements[.]” *See* Mar. 1, 2010 Mem. Decision at 5-6.

19. On March 8, 2010, this Court issued an order adopting the “Net Investment Method” as “the proper interpretation and application of net equity” and expunging certain objections to the Trustee’s determinations of customer claims “insofar as those objections are based upon the Final Customer Statements rather than the Net Investment Method to determine Net Equity[.]” Mar. 8, 2010 Order (Docket No. 2020) (the “Net Equity Order”).

20. On March 8, 2010, this Court certified the Net Equity Order for immediate appeal to the United States Court of Appeals, “because this proceeding involves a matter of public importance, and an immediate appeal may materially advance the progress of this proceeding.” Mar. 8, 2010 Order (Docket No. 2022).

21. A final resolution on the definition of “net equity” is pending.

22. On May 19, 2010, the Trustee issued a Notice of Trustee’s Determination of Claim (the “Trustee’s Determination”), rejecting the Customer Claim for two apparent reasons: (1) no securities had been purchased by BLMIS on behalf of the Account (contrary to the monthly statements, trade confirmations, and quarterly portfolio management reports regularly

sent by BLMIS); and (2) more funds had been withdrawn from the Account than were deposited in it. *See* Exh. B.

GROUND FOR OBJECTION

I. The Trustee Breached His Duty of Good Faith to Barbara Kotlikoff Harman by Decreasing Her “Net Equity” Due to Allegedly Fictitious Profits from the Toby Harman Account and the Harry J. Harman Account.

23. The Bequest Transfers, representing the value transferred to Barbara Kotlikoff Harman pursuant to the Toby Harman Bequest and the Harry J. Harman Bequest, had a combined value of approximately \$772,934.59.

24. The Trustee’s Determination contains an “Adjusted Amount” for each of the Bequest Transfers of \$0.00.

25. According to the Trustee’s Determination, the Trustee’s “Adjusted Amounts” reflect the Trustee reducing the value of “certain of the transfers into or out of your account” so as to give credit to “originally invested principal” while giving no credit to “fictitious gains that were fabricated by BLMIS.” *See* Exh. B. Thus, by asserting that each of the Bequest Transfers had a total adjusted value of \$0.00, the Trustee was asserting that the entirety of the value of the Bequest Transfers represented “fictitious gains” to the Toby Harman Account and the Harry J. Harman Account.

26. By reducing the value of the Bequest Transfers down to nothing, the Trustee was able to avoid charging the value of the Bequest Transfers against the accounts of Toby Harman and Harry J. Harman, both of whom had negative “net equity” under the Trustee’s method for calculating “net equity” and both of whom were deceased with no assets that could be attacked in a clawback action. *See* Exh. C (May 24, 2010 Notice of Trustee’s Determination of Claim for the Toby Harman Account, containing an “Adjusted Amount” for the Bequest Transfer of \$0.00 and an “Adjusted Amount” for the related transfer to the BLMIS Account of Robert E. Harman

of \$0.00: these adjustments shifted the Trustee's "net equity" determination for the Toby Harman Account from \$1,112,488.82 negative to only \$270,112.00 negative).

27. In reducing the value of the Bequest Transfers down to nothing, the Trustee treated the Bequest Transfers differently from any other withdrawal from the relevant accounts, each of which served to reduce the net equity only of the transferor account. *See* Exh. C.

28. If the Trustee had charged the Bequest Transfers against the transferor accounts, the only way the Trustee would have been able to recover the value of the Bequest Transfers from the moneys BLMIS owed to Barbara Kotlikoff Harman would have been by means of a clawback action. Instead, by an accounting mechanism he chooses to employ, the Trustee seeks to achieve the same result without any judicial procedure.

29. This method of accounting represents a breach of the basic duty of loyalty the Trustee owes to Barbara Kotlikoff Harman, as a customer of BLMIS. *See In re Jackson*, 388 B.R. 40, 42 (Bankr. W.D.N.Y. 2008) (noting, of a Chapter 7 trustee, "Every trustee is a fiduciary, and as such, owes the duties of good faith, trust, confidence and candor.") (citation omitted); 15 U.S.C. § 78fff-1(b) ("[A SIPC] trustee shall be subject to the same duties as a trustee in a case under chapter 7 of title 11[.]"); *c.f.* 11 U.S.C. § 763(c) (In the liquidation of a commodity broker, "[t]he net equity in a customer's account may not be offset against the net equity in the account of any other customer.").

30. In accordance with the fairness owed to each customer of BLMIS, this court should credit the Bequest Transfers as a contribution of principal to the Account and thus should restore to the net equity of the Account the approximately \$772,934.59 in Bequest Transfers that were legally passed through probate to the Account.

II. The Trustee's Determination Is Inadequate Under the December 23, 2008 Order and the Legal Standard for an Objection to a Claim.

31. Because the Customer Claim was timely filed and executed, it is *prima facie* valid under Federal Rule of Bankruptcy Procedure 3001(f). *See also* 11 U.S.C. § 502(a).

32. While the Trustee's Determination includes an exhibit purporting to calculate the money deposited in the Account less the money withdrawn from the Account, this exhibit is entirely unsubstantiated: no supporting documentation is provided, and no explanation is provided for what documents (if any) were used to prepare the exhibits.

33. The Trustee's Determination focuses exclusively on the Account, with no description of any deposits to or withdrawals from the Initial Account. The Trustee's Determination thus contains absolutely no record of the relevant BLMIS transactions for eight of the nineteen years between when the Initial Account was created and December of 2008.

34. The Trustee's Determination contains an "Adjusted Amount" for the Account Transfer of \$80,045.42.

35. According to the Trustee's Determination, the Trustee's "Adjusted Amounts" reflect the Trustee reducing the value of "certain of the transfers into or out of your account" so as to give credit to "originally invested principal" while giving no credit to "fictitious gains that were fabricated by BLMIS." *See* Exh. B. Thus, by giving an "Adjusted Amount" for the Account Transfer of \$80,045.42, the Trustee is asserting that only \$80,045.42 in "originally invested principal" was ever deposited in the Initial Account.

36. Upon information, belief, and the limited BLMIS account records available, Barbara Kotlikoff Harman believes that a substantially greater amount was deposited into the Initial Account, and that no money was withdrawn prior to the Account Transfer.

37. It is unreasonable to anticipate that Barbara Kotlikoff Harman would be able to contradict the Trustee's assertion with her own records of withdrawals and deposits from the Initial Account, given: (a) the number of years between when Barbara Kotlikoff Harman first became a customer of BLMIS and December of 2008 (nineteen years); (b) the apparent safety and solvency of BLMIS; and (c) that complete and accurate historical financial records are usually available from broker-dealers such as BLMIS upon request.

38. Furthermore, the Trustee's Determination contains absolutely no information on deposits to or withdrawals from the Toby Harman Account or the Harry J. Harman account, despite the "adjustment" of the values of the Bequest Transfers from those accounts from \$772,934.59 to \$0.00, as discussed *supra*.

39. Due to the inadequate information provided, the Trustee's Determination fails to meet the basic standard for an objection to a claim, *see In re Best Payphones*, No. 01-15472 (SMB), 2007 WL 203980, at *6 (Bankr. S.D.N.Y. Jan. 24, 2007) ("The proof of claim is analogous to a complaint, and the objection is analogous to and must meet the standards of an answer in a civil action.") (citations omitted); *see also* Fed. R. Civ. P. 8(b)(2) ("A denial must fairly respond to the substance of the allegation."), and it fails to comply with this Court's command that the Trustee explain with sufficient clarity "the reason" why the Trustee chose to disallow the Customer Claim, *see* Dec. 23, 2008 Order (Docket No. 12).

40. For these reasons, absent specific proof of each withdrawal and deposit, the Trustee's Determination should be rejected by this Court.

III. The Trustee's Determination Fails to Comply with the Trustee's Obligations Under 15 U.S.C. § 78fff-4(c).

41. The Trustee is obligated pursuant to 15 U.S.C. § 78fff-4(c) to:

promptly satisfy all obligations of the member to each of its customers relating to, or net equity claims based upon, securities or cash by the delivery of securities or

the effecting of payments to such customer . . . insofar as such obligations are ascertainable from the books and records of the member or are otherwise established to the satisfaction of SIPC.

42. The “books and records” of BLMIS include the Final Customer Statement and all other monthly statements, trade confirmations, and quarterly portfolio management reports regularly sent by BLMIS to Barbara Kotlikoff Harman.

43. The “books and records” of BLMIS, as reflected in the Final Customer Statement, establish that BLMIS is obligated to pay Barbara Kotlikoff Harman \$1,802,563.77. *See* Exh. A.

44. By not acting “promptly” to “satisfy” the clearly “ascertainable” obligation of BLMIS to Barbara Kotlikoff Harman, the Trustee violated 15 U.S.C. § 78fff-4(c).

IV. The Trustee’s Determination Failed to Honor Barbara Kotlikoff Harman’s Legitimate Customer Expectations and Violated the Intent Behind and Meaning of SIPA.

45. In 1978, amendments were passed to SIPA in order to “make SIPA more responsive to the reasonable expectations of public investors and [to] provide investors with greater protection against the financial failure of stock-brokers, thereby enhancing investor confidence in the securities markets.” H.R. Rep. 95-746, at 21 (1977).

46. The 1978 Amendments were intentionally designed to ensure that each “customer” would receive compensation based on what that customer legitimately believed was in his or her account, *even if the securities at issue were never purchased*:

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 the customer claims for a particular stock exceed the supply available to the trustee in the debtor’s estate, then customers generally receive pro rata portions of the securities claims, and as to any remainder, they will receive cash based on the market value as of the filing date (normally the day the liquidation proceeding is initiated). . . . By seeking to make customer accounts whole and returning them to customers in the form they existed on the filing date, the amendments not only would satisfy the customers’ legitimate expectations, but also would allow him to continue to exercise investment prerogatives and to avoid oftentimes adverse tax consequences.

H.R. Rep. 95-746, at 21 (emphasis added) (Report from the Committee on Interstate and Foreign Commerce);

Under present law, because securities belonging to customers may have been lost, improperly hypothecated, misappropriated, never purchased or even stolen, it is not always possible to provide to customers that which they expect to receive, that is, securities which the maintained in their brokerage account. . . .

. . . By seeking to make customer accounts whole and returning them to customers in the form they existed on the filing date, *the amendments* not only *would satisfy the customers' legitimate expectations* but also would restore the customer to his position prior to the broker-dealer's financial difficulties.

S. Rep. 95-763 (1978) (emphasis added) (Report from the Committee on Banking, Housing, and Urban Affairs).

47. Officials of and advocates for the Securities Investor Protection Corporation ("SIPC") have also stated on the record that the amended SIPA was intended to ensure that each customer would have a claim for all securities that he or she reasonably thought he or she owned, regardless of whether those securities ever existed in the customer's account. *E.g.*,

The proposed amendments carry out the Task Force recommendations and are designed to make the act more responsive to the reasonable expectations of investors. Even though the overall purpose of the law is being met, that is to provide protect to customers of broker/dealers, some customers of failed members still believe that they are not receiving the protection they thought they were going to get in the way they believe they should get it. The proposed amendments will enhance investor confidence in our securities markets.

. . .

[C]ustomers generally expect to receive what is in their accounts when the member stops doing business. If John Q. Investor has 100 fully-paid shares of IBM and a credit balance of \$200 in his account, he expects to receive from the trustee a stock certificate for 100 shares of IBM and a check for \$200.

But in many instances that has not always been possible because securities have been lost, improperly hypothecated, never purchased, or even stolen.

. . .

The proposed amendments are designed to meet [this and other] shortcomings in the law The amendments will, we believe, serve to maximize consumer protection[.]

H.R. Rep. 95-746, at 39 (emphasis added) (Statement by SIPC Chairman Hugh F. Owens);

Of vital importance here, reasonable and legitimate claimant expectations on the filing date are controlling even where inconsistent with transactional 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 the purchase. . . . [T]his emphasis on reasonable and legitimate claimant expectations frequently yields much greater "customer" protection than would be the case if transactional reality, not claimant expectations, were controlling, as this court's earlier opinion in this liquidation well illustrates.*

Br. of Appellant SIPC, Dec. 27, 2005, *Stafford v. Giddens (In re New Times Secs. Servs., Inc.)*,

No. 05-5527-bk, 2005 WL 5338148, at *23-*24 (2d Cir.) (footnote and citations omitted; emphasis added);

MR. HARBECK: Now, what Congress did is it said it wants to give the Trustee and SIPC a very good idea of what securities have to -- that the Trustee is going to have to go out into the marketplace and buy. So, if you file within sixty days, you'll get the securities, without question. Whether -- if they triple in value, you'll get the securities.

But, if --

THE COURT: Even -- if --

MR. HARBECK: Even if they're not there.

THE COURT: Even if they're not there.

MR. HARBECK: Correct.

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

MR. HARBECK: And the securities were never purchased.

THE COURT: Okay.

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

Tr. 37:17-38:10, July 28, 2000, *In re New Times Secs. Servs., Inc.*, No. 00-8178 (Bankr. E.D.N.Y.) (dialogue between Bankruptcy Court and Stephen P. Harbeck, President and Chief Executive Officer of SIPC).

48. Josephine Wang, SIPC's General Counsel, was cited by the "Insiders' Blog" at StreetInsider.com as having applied the logic of legitimate expectations as follows:

Based on a conversations [sic] 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 Maddof [sic] client number 1234 was given a statement showing that they owned 1000 GOOG shares, even if a transaction never took place, the SIPC has to buy and replace the 1000 GOOG shares.

Insiders' Blog, *SIPC's Role In Madoff-Of-All-Scams Could Save The Stock Market*, StreetInsider.com, Dec. 16, 2008,
<http://www.streetinsider.com/Insiders+Blog/SIPC's+Role+In+Madoff-Of-All-Scams+Could+Save+The+Stock+Market/4243249.html>.

49. Indeed, consistent with these statements, the language of the Series 500 Rules governing SIPC shows that a customer is allowed to pursue a claim for securities if the customer receives written notice of the purchase of the securities, *whether or not the securities were actually purchased*:

Where the Debtor held cash in an account for a customer, the customer has a "claim for securities" with respect to any authorized securities purchase:

- (1) if the Debtor has sent written confirmation to the customer that the securities in question have been purchased for or sold to the customer's account; or
- (2) whether or not such a written confirmation has been sent, if the securities in question have become the subject of a completed or executory contract for purchase for or sale to the account.

17 C.F.R. § 300.502(a); *see also In re New Times Secs. Servs., Inc.*, 371 F.3d 68, 86 (2d Cir. 2004) (“Under the Series 500 Rules, whether a claim is treated for securities or cash depends not on what is *actually* in the customer’s account but on what the customer has been told by the debtor in written confirmations.”).

50. Due to the monthly statements, trade confirmations, and quarterly portfolio management reports regularly sent by BLMIS, Barbara Kotlikoff Harman reasonably believed and legitimately expected, throughout the existence of the Account, that BLMIS had executed the transactions claimed in the records sent and that the Account contained all securities mentioned and all proceeds therefrom.

51. Indeed, in each year that funds were withdrawn from the Account, Barbara Kotlikoff Harman paid income taxes on the withdrawals. Such taxes would not have been paid, nor billed by the Internal Revenue Service, if Barbara Kotlikoff Harman did not reasonably believe and legitimately expect that the assets in the Account existed.

52. By ignoring Barbara Kotlikoff Harman’s reasonable beliefs and legitimate expectations in the Trustee’s Determination, the Trustee violated both the intent behind and the meaning of the amended SIPA.

V. The Trustee’s Determination Functions as an Illegal Clawback Action in Violation of the Applicable Statute of Limitations.

53. Pursuant to the Final Customer Statement, Barbara Kotlikoff Harman was owed \$1,802,563.77 by BLMIS, due to the purported holdings of the Account.

54. All withdrawals from the Account were without notice of any impropriety or fraud by BLMIS, and each withdrawal was made for value (*i.e.*, a corresponding reduction in the amount of money owed by BLMIS due to the purported holdings of the Account).

55. The Trustee, through the Trustee's Determination, is attempting to reduce BLMIS's obligation down to nothing. This functional clawback action has been mounted without the allegation of a single ground for avoidance under either federal or state law and without following any of the procedures required by Rules 7001(1) and 7008(a) of the Federal Rules of Bankruptcy Procedure.

56. The Trustee is attempting to reduce Barbara Kotlikoff Harman's net equity on account of withdrawals as far back as December 2, 1998, well beyond any potentially applicable limitations period for an avoidance action.

57. The Trustee's Determination is an illegal attempt to circumvent established and governing laws, and it should be rejected for that reason.

VI. Barbara Kotlikoff Harman is Entitled to Interest on the Customer Claim.

58. Because "[t]he proof of a claim is analogous to a complaint," *Best Payphones*, 2007 WL 203980, at *6, upon the Customer Claim's acceptance, Barbara Kotlikoff Harman will be entitled to interest under New York law (which is applicable here). *See* N.Y. C.P.L.R. § 5004 (providing for a nine per cent fixed interest rate for judgments).

59. Barbara Kotlikoff Harman is equally entitled to prejudgment interest, since the money invested with BLMIS was converted. *See Eighteen Holding Corp. v. Drizin*, 268 A.2d 371 (1st Dep't 2000) (awarding prejudgment interest on judgment for money had and received, unjust enrichment, and conversion because "defendants wrongly withheld plaintiff's money"); *see also Steinberg v. Sherman*, No. 07 Civ. 1001 (WHP), 2008 U.S. Dist. LEXIS 35786, at *15 (S.D.N.Y. May 2, 2008) (citing cases for the proposition that prejudgment interest is generally available for judgments of conversion and unjust enrichment, with interest calculated at the nine percent statutory rate for post-judgment interest).

60. Furthermore, victims of a Ponzi scheme are entitled to “an expectancy measure of damages, which seeks to put Plaintiffs in the position they would have held had [the broker-dealer] not breached [its] ‘bargain’ to invest Plaintiffs’ money.” *See Visconsi v. Lehman Bros., Inc.*, 244 Fed. App’x 708, 713 (6th Cir. 2007) (noting that defrauded investors are entitled to be compensated based on the fact that they gave their money “not to hide under a rock or lock in a safe, but for the express purpose of investment, with a hope-indeed a reasonable expectation-that it would grow[]”).

61. As a victim of BLMIS’s conversion of the Account, Barbara Kotlikoff Harman is entitled to prejudgment interest at the New York statutory rate of nine percent.

VII. Barbara Kotlikoff Harman Is Entitled to an Advance from SIPC and a Share of Customer Property.

62. The Final Customer Statement, on which Barbara Kotlikoff Harman reasonably and legitimately relied, entitles her to the Customer Claim, *i.e.* \$1,802,563.77. *See* Exh. A.

63. The Trustee, on behalf of SIPC, is obligated to advance to each customer with a valid and outstanding claim for securities the first \$500,000 of her or her claim. *See* 15 U.S.C. § 78fff-3(a). Any such customer who has a claim for more than \$500,000 is entitled to “share ratably in [any available] customer property on the basis of and to the extent of their respective net equities[.]” minus the amount advanced. *See* 15 U.S.C. § 78fff-2(c)(1).

64. Thus, Barbara Kotlikoff Harman is entitled to an advance of \$500,000 from SIPC and claims against customer property for the remainder of the Customer Claim, *i.e.* \$1,802,563.77.

RESERVATION OF RIGHTS

65. Barbara Kotlikoff Harman reserves the right to revise, supplement, or amend this Objection, and any failure to object on a particular ground or grounds shall not be construed as a waiver of her right to object on such additional ground or grounds.

66. Barbara Kotlikoff Harman reserves all rights set forth in Rule 9014 of the Federal Rules of Bankruptcy Procedure, including, without limitation, rights to discovery.

RELIEF REQUESTED

For the reasons stated herein, the Customer Claim should be allowed in its entirety in the amount of \$1,802,563.77, which is the amount stated on the Final Customer Statement, plus interest from the date of the Trustee's Determination.

For the reasons stated herein, this Court should direct SIPC to advance Barbara Kotlikoff Harman \$500,000 forthwith.

For the reasons stated herein, the Trustee's Determination should be rejected.

Barbara Kotlikoff Harman requests such other relief as may be just and equitable.

Dated: New York, New York
June 16, 2010

STROOCK & STROOCK & LAVAN LLP

By: 

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New York, New York 10038-4982
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Attorneys for Barbara Kotlikoff Harman

EXHIBIT A

(Customer Claim)

Barbara Kotlikoff Harman

Rivermere Lake Avenue, Apr. 4B
Bronxville, New York 10708

Irving H. Picard, Esq.
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201

January 30, 2009

Re: Barbara Kotlikoff Harman
Madoff Account # 1-H0099-3-0; 1-H0099-4-0

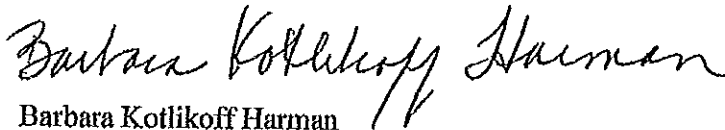
Dear Mr. Picard:

Please find enclosed the following documents regarding my Customer Claim against
Bernard L. Madoff Investment Securities LLC.

1. Customer Claim Form
2. Last Account Statement dated November 30, 2008

If there are any questions, please feel free to contact me. My home phone number is
914-779-1537.

Sincerely,


Barbara Kotlikoff Harman

CUSTOMER CLAIM

Claim Number _____

Date Received _____

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008

Irving H. Picard, Esq.
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201

Provide your office and home telephone no.

OFFICE: _____

HOME: 914-779-1537

XXXXXXXXXXXX

Account Number: 1H0099

BARBARA KOTLIKOFF HARMAN
RIVERMERE ALGER COURT APT 4B
LAKE AVENUE
BRONXVILLE, NY 10708

Taxpayer I.D. Number (Social Security No.)

145-40-4267

(If incorrect, please change)

NOTE: BEFORE COMPLETING THIS CLAIM FORM, BE SURE TO READ CAREFULLY THE ACCOMPANYING INSTRUCTION SHEET. A SEPARATE CLAIM FORM SHOULD BE FILED FOR EACH ACCOUNT AND, TO RECEIVE THE FULL PROTECTION AFFORDED UNDER SIPA, ALL CUSTOMER CLAIMS MUST BE RECEIVED BY THE TRUSTEE ON OR BEFORE March 4, 2009. CLAIMS RECEIVED AFTER THAT DATE, BUT ON OR BEFORE July 2, 2009, WILL BE SUBJECT TO DELAYED PROCESSING AND TO BEING SATISFIED ON TERMS LESS FAVORABLE TO THE CLAIMANT. PLEASE SEND YOUR CLAIM FORM BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED.

1. Claim for money balances as of **December 11, 2008**:

a. The Broker owes me a Credit (Cr.) Balance of \$ _____

b. I owe the Broker a Debit (Dr.) Balance of \$ _____

- c. If you wish to repay the Debit Balance,
please insert the amount you wish to repay and
attach a check payable to "Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC."

If you wish to make a payment, it must be enclosed
with this claim form.

\$ —
NONE

- d. If balance is zero, insert "None."

2. Claim for securities as of December 11, 2008:

PLEASE DO NOT CLAIM ANY SECURITIES YOU HAVE IN YOUR POSSESSION.

- | | <u>YES</u> | <u>NO</u> |
|---|---------------|---------------|
| a. The Broker owes me securities | <u>✓</u> | <u> </u> |
| b. I owe the Broker securities | <u> </u> | <u>✓</u> |
| c. If yes to either, please list below: | | |

Date of Transaction (trade date)	Name of Security	Number of Shares or Face Amount of Bonds	
		The Broker Owes Me (Long)	I Owe the Broker (Short)
<u>11/12/08</u>	<u>SEE NOVEMBER 30, 2008 STATEMENT</u> <u>ATTACHED</u> <u>ACCOUNT N° 1-H0099-3-0</u> <u>1-H0099-4-0</u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>

Proper documentation can speed the review, allowance and satisfaction of your claim and shorten the time required to deliver your securities and cash to you. Please enclose, if possible, copies of your last account statement and purchase or sale confirmations and checks which relate to the securities or cash you claim, and any other documentation, such as correspondence, which you believe will be of assistance in processing your claim. In particular, you should provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of your deposits of cash or securities with the Debtor from as far back as you have documentation. You should also provide all documentation or

information regarding any withdrawals you have ever made or payments received from the Debtor.

Please explain any differences between the securities or cash claimed and the cash balance and securities positions on your last account statement. If, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please be sure to provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received.
PLEASE CHECK THE APPROPRIATE ANSWER FOR ITEMS 3 THROUGH 9.

NOTE: IF "YES" IS MARKED ON ANY ITEM, PROVIDE A DETAILED EXPLANATION ON A SIGNED ATTACHMENT. IF SUFFICIENT DETAILS ARE NOT PROVIDED, THIS CLAIM FORM WILL BE RETURNED FOR YOUR COMPLETION.

- | | <u>YES</u> | <u>NO</u> |
|---|------------|-----------|
| 3. Has there been any change in your account since December 11, 2008? If so, please explain. | _____ | _____ ✓ |
| 4. Are you or were you a director, officer, partner, shareholder, lender to or capital contributor of the broker? | _____ | _____ ✓ |
| 5. Are or were you a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the broker? | _____ | _____ ✓ |
| 6. Are you related to, or do you have any business venture with, any of the persons specified in "4" above, or any employee or other person associated in any way with the broker? If so, give name(s) | _____ | _____ ✓ * |
| 7. Is this claim being filed by or on behalf of a broker or dealer or a bank? If so, provide documentation with respect to each public customer on whose behalf you are claiming. | _____ | _____ ✓ |
| 8. Have you ever given any discretionary authority to any person to execute securities transactions with or through the broker on your behalf? Give names, addresses and phone numbers. | _____ | _____ ✓ |

502180406

* MY HUSBAND LAURENCE HARMAN IS A COUSIN
3 OF JEROME HAROWITZ, (FRIEDLING & HAROWITZ
CPA'S). DAVID FRIEDLING HAS PREPARED OUR
PERSONAL INCOME TAX RETURNS.

9. Have you or any member of your family ever filed a claim under the Securities Investor Protection Act of 1970? If so, give name of that broker. ✓

Please list the full name and address of anyone assisting you in the preparation of this claim form: STROOCK & STROOCK & LAVAN LLP

180 MAIDEN LANE

NEW YORK, NY 10038

If you cannot compute the amount of your claim, you may file an estimated claim. In that case, please indicate your claim is an estimated claim.

IT IS A VIOLATION OF FEDERAL LAW TO FILE A FRAUDULENT CLAIM. CONVICTION CAN RESULT IN A FINE OF NOT MORE THAN \$50,000 OR IMPRISONMENT FOR NOT MORE THAN FIVE YEARS OR BOTH.

THE FOREGOING CLAIM IS TRUE AND ACCURATE TO THE BEST OF MY INFORMATION AND BELIEF.

Date 1/30/09 Signature Burtin Kollitoff Haiman
Date _____ Signature _____

(If ownership of the account is shared, all must sign above. Give each owner's name, address, phone number, and extent of ownership on a signed separate sheet. If other than a personal account, e.g., corporate, trustee, custodian, etc., also state your capacity and authority. Please supply the trust agreement or other proof of authority.)

This customer claim form must be completed and mailed promptly, together with supporting documentation, etc. to:

Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201

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

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

BERNARD L. MADOFF
INVESTMENT SECURITIES LLC
New York □ London

BARBARA KOTLIKOFF HARMAN

RIVERMERE ALGER COURT APT 4B
LAKE AVENUE
BRONXVILLE NY 10708

PERIOD ENDING
11/30/08

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YOUR ACCOUNT NUMBER
1-H0099-3-0

YOUR TAX PAYER IDENTIFICATION NUMBER
*******4267**

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	988		3709	BALANCE FORWARD		107,630.10	
11/12	646		4211	WAL-MART STORES INC	55.830	55,199.04	
11/12	2,394		8035	INTERNATIONAL BUSINESS MACHS	87.270	56,401.42	
11/12	2,622		8537	EXXON MOBIL CORP	72.880	174,569.72	
11/12	1,254		12863	INTEL CORP	14.510	38,149.22	
11/12	1,710		17188	JOHNSON & JOHNSON	59.580	74,763.32	
11/12	912		21514	J-P. MORGAN CHASE & CO	38.530	65,954.30	
11/12	532		25840	COCA COLA CO	44.660	40,765.92	
11/12	988		30166	MCDONALDS CORP	55.370	29,477.84	
11/12	3,610		34492	MERCK & CO	28.550	28,246.40	
11/12	1,824		38818	MICROSOFT CORP	21.810	78,878.10	
11/12	722		51796	ORACLE CORPORATION	17.500	31,627.20	
11/12	418		52298	PEPSICO INC	56.410	40,756.02	
11/12	3,078		56122	APPLE INC	100.780	42,142.04	
11/12	722		56624	Pfizer Inc	16.940	52,264.32	
11/12	1,368		60448	ABBOTT LABORATORIES	54.610	39,456.42	
11/12	454		60950	PROCTER & GAMBLE CO	64.080	87,715.44	
11/12	950		64774	AMGEN INC	59.160	29,244.04	
11/12	2,280		65276	PHILLIP MORRIS INTERNATIONAL	43.600	41,458.00	
11/12	760		69100	BANK OF AMERICA	21.590	49,316.20	
11/12	2,470		69602	QUALCOMM INC	33.770	25,695.20	
11/12	570		73426	CITI GROUP INC	12.510	30,997.70	
11/12	1,368		73928	SCHLUMBERGER LTD	49.480	28,225.60	
11/12				COMCAST CORP	16.510	22,639.68	
11/12				CL A			
11/12				CONTINUED ON PAGE 2			

PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES

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

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

BERNARD L. MADOFF
INVESTMENT SECURITIES LLC
New York ☐ London

BARBARA KOTLIKOFF HARMAN

RIVERMERE ALGER COURT APT 4B
LAKE AVENUE
BRONXVILLE NY 10708

YOUR ACCOUNT NUMBER 1-H0099-3-0	PERIOD ENDING 11/30/08	PAGE 2
YOUR TAX PAYER IDENTIFICATION NUMBER *****4257		

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	2,698		77752	AT&T INC	27	72,953.00	
11/12	684		78254	CONDOPHILIPS	52.510	35,943.84	
11/12	456		82078	UNITED PARCEL SVC INC CLASS B	52.040	23,748.24	
11/12	2,774		82580	CISCO SYSTEMS INC	16.730	46,519.02	
11/12	798		86404	U S BANCORP	29.530	23,595.94	
11/12	950		86906	CHEVRON CORP	73.430	69,796.50	
11/12	436		90730	UNITED TECHNOLOGIES CORP	53.160	24,258.96	
11/12	4,826		91232	GENERAL ELECTRIC CO	19.630	94,927.38	
11/12	1,292		95056	VERIZON COMMUNICATIONS	30.410	39,340.72	
11/12	114		95558	GOOGLE	337.400	38,467.60	
11/12	1,596		99382	WELLS FARGO & CO NEW	29.800	47,625.80	
11/12	1,140		99884	HEWLETT PACKARD CO	34.900	39,831.00	
11/12		1,700,000	21994	U S TREASURY BILL DUE 2/12/2009	99.936		1,698,912.00
11/12				FIDELITY SPARTAN U S TREASURY MONEY MARKET DIV 11/12/08	DIV		28.65
11/12		44,127	17093	FIDELITY SPARTAN U S TREASURY MONEY MARKET	1		44,127.00
11/12	14,443		26462	FIDELITY SPARTAN U S TREASURY MONEY MARKET DIV 11/19/08	1	14,443.00	
11/19				CONTINUED ON PAGE 3	DIV		1.77

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BRONXVILLE NY 10708

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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
11/19		14,443	51845	FIDELITY SPARTAN	1		14,443.00
11/19	125,000		56441	U S TREASURY MONEY MARKET	99.926	124,907.50	
				U S TREASURY BILL DUE 03/26/2009			
11/19	3,385		60884	FIDELITY SPARTAN	1	3,385.00	
				U S TREASURY MONEY MARKET			
				NEW BALANCE		213,802.32	
				SECURITY POSITIONS	MKT PRICE		
	2,698			AT&T INC	28.560		
	722			ABBOTT LABORATORIES	52.390		
	494			AMGEN INC	55.540		
	418			APPLE INC	92.670		
	2,280			BANK OF AMERICA	16.250		
	950			CHEVRON CORP	79.010		
	2,774			CISCO SYSTEMS INC	16.540		
	2,470			CITI GROUP INC	8.290		
	912			COCA COLA CO	46.870		
	1,368			COMCAST CORP	17.340		
				CL A			
	684			CONOCOPHILIPS	52.520		
	2,594			EXXON MOBIL CORP	80.150		
	4,826			GENERAL ELECTRIC CO	17.170		
				CONTINUED ON PAGE 4			

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YOUR ACCOUNT NUMBER
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YOUR TAX PAYER IDENTIFICATION NUMBER
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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
	114			GOOGLE	292.960		
	1,140			HEWLETT PACKARD CO	35.280		
	2,622			INTEL CORP	13.800		
	646			INTERNATIONAL BUSINESS MACHS	81.600		
	1,710			J.P. MORGAN CHASE & CO	31.660		
	1,254			JOHNSON & JOHNSON	58.580		
	532			MCDONALDS CORP	58.750		
	988			MERCK & CO	26.720		
	3,610			MICROSOFT CORP	20.220		
	1,824			ORACLE CORPORATION	16.090		
	722			PEPSICO INC	56.700		
	3,078			PFIZER INC	16.430		
	950			PHILLIP MORRIS INTERNATIONAL	42.160		
	1,368			PROCTER & GAMBLE CO	64.350		
	760			QUALCOMM INC	39.570		
	570			SCHLUMBERGER LTD	50.740		
	3,385			FIDELITY SPARTAN	1		
				U.S. TREASURY MONEY MARKET			
				U.S. BANCORP	26.980		
				UNITED PARCEL SVC INC	57.600		
				CLASS B			
				U.S. TREASURY BILL	99.971		
	125,000			DUE 03/26/2009			
				3/26/2009			
				UNITED TECHNOLOGIES CORP			
	456			CONTINUED ON PAGE 5	48.530		

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INVESTMENT SECURITIES LLC
New York ☐ London

BARBARA KOTLIKOFF HARMAN

RIVERMERE ALGER COURT APT 4B
LAKE AVENUE
BRONXVILLE NY 10708

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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
	1,292 988 1,596			VERIZON COMMUNICATIONS WAL-MART STORES INC WELLS FARGO & CO NEW MARKET VALUE OF SECURITIES LONG 1,802,563.77 SHORT	32.650 55.880 28.890		

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BARBARA KOYLIKOFF HARMAN

RIVERMERE ALGER COURT APT 4B
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BRONXVILLE NY 10708

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YOUR TAX PAYER IDENTIFICATION NUMBER ***-**-4267	

DATE	BOUGHT RECEIVED OR LONG	SOLO DELIVERED OR SHORT	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
				YEAR-TO-DATE SUMMARY			
				DIVIDENDS			12,533.93
				GROSS PROCEEDS FROM SALES			12,284,446.57

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New York □ London

BARBARA KOTLIKOFF HARNAN

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YOUR ACCOUNT NUMBER
1-H0099-4-0

YOUR TAX PAYER IDENTIFICATION NUMBER
*****4267

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				BALANCE FORWARD			107,631.00
11/12	38	38	43144	S & P 100 INDEX NOVEMBER 460 CALL	15.600		60,002.00
11/19		38	47470	S & P 100 INDEX NOVEMBER 450 PUT	17.800	67,678.00	
11/19			33574	S & P 100 INDEX DECEMBER 430 CALL	26		
11/19	38		37899	S & P 100 INDEX DECEMBER 420 PUT	30	114,038.00	
11/19	38		42224	S & P 100 INDEX NOVEMBER 460 CALL	3	11,438.00	
11/19		38	46549	S & P 100 INDEX NOVEMBER 450 PUT	37		140,562.00
				NEW BALANCE			213,803.00
				SECURITY POSITIONS			
		38		S & P 100 INDEX DECEMBER 430 CALL	MKT PRICE 23.300		
	38			S & P 100 INDEX DECEMBER 420 PUT	16.500		
				MARKET VALUE OF SECURITIES			
				LONG			
				62,700.00			
				SHORT			
				88,540.00-			

PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES

EXHIBIT B

(Trustee's Determination of Account 1-H0099)

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008¹

NOTICE OF TRUSTEE'S DETERMINATION OF CLAIM

May 19, 2010

Barbara Kotlikoff Harman
Rivermere Alger Court Apt. 4B
Lake Avenue
Bronxville, NY 10708

Dear Barbara Kotlikoff Harman:

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 claim on BLMIS Account No. 1H0099 designated as Claim Number 1418:

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

Further, based on the Trustee's analysis, the amount of money you withdrew from your account at BLMIS (total of \$1,180,000.00), 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 \$505,045.42). 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.

¹ Section 7811(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 7811(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.

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.

Whenever 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 or withdrawals 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.

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 (\$674,954.58) 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.

On March 1, 2010, the United States Bankruptcy Court for the Southern District of New York (Lifland, J.) issued a decision which affirmed the Trustee's Net Investment Method for determining customer claims. The final resolution of this issue is expected to be determined on appeal.

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 May 19, 2010, 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.

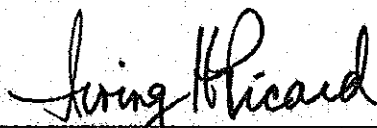
PLEASE TAKE FURTHER NOTICE: If you properly and timely file a written opposition, a hearing date for this controversy will be obtained by the Trustee and you will be notified of that hearing date. Your failure to appear personally or through counsel at such hearing will result in the Trustee's determination 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 10111



Irving H. Picard

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

cc: Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, NY 10038

DATE	TRANSACTION DESCRIPTION	AMOUNT	ADJUSTED AMOUNT
6/9/1997	TRANS FROM 1H000810	\$273,398.74	\$80,045.42
12/2/1998	CHECK	\$30,000.00	\$30,000.00
12/2/1998	CHECK	\$20,000.00	\$20,000.00
6/9/2000	CHECK	\$100,000.00	\$100,000.00
6/9/2000	CHECK	\$50,000.00	\$50,000.00
9/6/2001	CHECK	\$55,000.00	\$55,000.00
1/29/2002	CHECK	\$70,000.00	\$70,000.00
4/7/2003	TRANS FROM 1H013030	\$421,188.41	\$0.00
4/17/2003	CHECK	\$100,000.00	\$100,000.00
12/31/2003	TRANS FROM 1H015130	\$351,746.18	\$0.00
Total Deposits:		\$1,471,333.33	\$505,045.42
DATE	TRANSACTION DESCRIPTION	AMOUNT	ADJUSTED AMOUNT
4/7/1998	CHECK	(\$20,000.00)	(\$20,000.00)
11/15/1999	CHECK	(\$10,000.00)	(\$10,000.00)
4/4/2000	CHECK	(\$29,000.00)	(\$29,000.00)
4/6/2000	CHECK	(\$29,000.00)	(\$29,000.00)
4/10/2000	CANCEL CHECK 4/6/00	\$29,000.00	\$29,000.00
10/3/2000	CHECK	(\$20,000.00)	(\$20,000.00)
2/21/2001	CHECK	(\$35,000.00)	(\$35,000.00)
4/3/2002	CHECK	(\$26,000.00)	(\$26,000.00)
10/25/2002	CHECK	(\$25,000.00)	(\$25,000.00)
7/1/2003	CHECK	(\$20,000.00)	(\$20,000.00)
10/1/2003	CHECK	(\$20,000.00)	(\$20,000.00)
1/2/2004	CHECK	(\$20,000.00)	(\$20,000.00)
4/1/2004	CHECK	(\$70,000.00)	(\$70,000.00)
7/1/2004	CHECK	(\$20,000.00)	(\$20,000.00)
8/5/2004	CHECK	(\$20,000.00)	(\$20,000.00)
10/1/2004	CHECK	(\$20,000.00)	(\$20,000.00)
1/3/2005	CHECK	(\$20,000.00)	(\$20,000.00)
4/1/2005	CHECK	(\$110,000.00)	(\$110,000.00)
4/12/2005	STOP PAYMENT	\$110,000.00	\$110,000.00
4/12/2005	CHECK	(\$110,000.00)	(\$110,000.00)
7/1/2005	CHECK	(\$20,000.00)	(\$20,000.00)
8/5/2005	CHECK	(\$30,000.00)	(\$30,000.00)
10/3/2005	CHECK	(\$20,000.00)	(\$20,000.00)
1/3/2006	CHECK	(\$10,000.00)	(\$10,000.00)
1/3/2006	CHECK	(\$20,000.00)	(\$20,000.00)

4/3/2006	CHECK	(\$80,000.00)	(\$80,000.00)
7/3/2006	CHECK	(\$20,000.00)	(\$20,000.00)
8/9/2006	CHECK	(\$35,000.00)	(\$35,000.00)
10/2/2006	CHECK	(\$20,000.00)	(\$20,000.00)
1/2/2007	CHECK	(\$30,000.00)	(\$30,000.00)
4/2/2007	CHECK	(\$20,000.00)	(\$20,000.00)
4/2/2007	CHECK	(\$100,000.00)	(\$100,000.00)
7/2/2007	CHECK	(\$30,000.00)	(\$30,000.00)
10/1/2007	CHECK	(\$30,000.00)	(\$30,000.00)
11/28/2007	CHECK	(\$20,000.00)	(\$20,000.00)
1/2/2008	CHECK	(\$30,000.00)	(\$30,000.00)
3/27/2008	CHECK	(\$90,000.00)	(\$90,000.00)
6/4/2008	CHECK	(\$30,000.00)	(\$30,000.00)
7/1/2008	CHECK	(\$30,000.00)	(\$30,000.00)
10/1/2008	CHECK	(\$30,000.00)	(\$30,000.00)
Total Withdrawals:		(\$1,180,000.00)	(\$1,180,000.00)
Total deposits less withdrawals:		\$291,333.33	(\$674,954.58)

EXHIBIT C

(Trustee's Determination of Account 1-H0130)

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008¹

NOTICE OF TRUSTEE'S DETERMINATION OF CLAIM

May 24, 2010

For Account of the Toby Harman Trust
c/o Robert E. Harman
3209 St. James Court
Bloomington, IN 47401

Dear For Account of the Toby Harman Trust:

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 claim on BLMIS Account No. 1H0130 designated as Claim Number 1186:

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

Further, based on the Trustee's analysis, the amount of money you withdrew from your account at BLMIS (total of \$270,112.00), 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 \$0.00). 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.

¹ Section 78111(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 78111(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.

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.

Whenever 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 or withdrawals 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.

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 (\$270,112.00) 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.

On March 1, 2010, the United States Bankruptcy Court for the Southern District of New York (Lifland, J.) issued a decision which affirmed the Trustee's Net Investment Method for determining customer claims. The final resolution of this issue is expected to be determined on appeal.

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 May 24, 2010, 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.

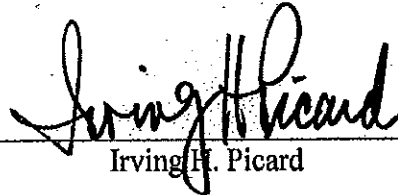
PLEASE TAKE FURTHER NOTICE: If you properly and timely file a written opposition, a hearing date for this controversy will be obtained by the Trustee and you will be notified of that hearing date. Your failure to appear personally or through counsel at such hearing will result in the Trustee's determination 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 10111


Irving H. Picard

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

DATE	TRANSACTION DESCRIPTION	AMOUNT	ADJUSTED AMOUNT
9/16/1998	TRANS FROM 1H012930	\$620,000.00	\$0.00
Total Deposits:		\$620,000.00	\$0.00
DATE	TRANSACTION DESCRIPTION	AMOUNT	ADJUSTED AMOUNT
10/1/1998	CHECK	(\$20,000.00)	(\$20,000.00)
10/5/1998	CANCEL CHECK 10/1/98	\$20,000.00	\$20,000.00
10/6/1998	CHECK	(\$20,000.00)	(\$20,000.00)
1/4/1999	CHECK	(\$20,000.00)	(\$20,000.00)
3/11/1999	CHECK	(\$11,000.00)	(\$11,000.00)
1/10/2000	CHECK	(\$15,006.00)	(\$15,006.00)
3/7/2000	CHECK	(\$47,859.00)	(\$47,859.00)
1/24/2001	CHECK	(\$14,977.00)	(\$14,977.00)
3/13/2001	CHECK	(\$23,778.00)	(\$23,778.00)
1/10/2002	CHECK	(\$17,298.00)	(\$17,298.00)
3/15/2002	CHECK	(\$43,200.00)	(\$43,200.00)
1/16/2003	CHECK	(\$18,161.00)	(\$18,161.00)
3/24/2003	CHECK	(\$38,833.00)	(\$38,833.00)
4/7/2003	TRANS TO 1H009930	(\$421,188.41)	\$0.00
4/7/2003	TRANS TO 1H015030	(\$421,188.41)	\$0.00
Total Withdrawals:		(\$1,112,488.82)	(\$270,112.00)
Total deposits less withdrawals:		(\$492,488.82)	(\$270,112.00)

CERTIFICATION OF SERVICE

I, Christopher Guhin, hereby certify that on June 16, 2010, I caused a true and correct copy of the foregoing **Objection to Trustee's Determination of Claim** on behalf of Barbara Kotlikoff Harman: to be filed electronically with the Court and served upon the parties in this action who receive electronic service through CM/ECF; to be served by hand upon:

Irving H. Picard, Trustee
c/o Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111;

and to be mailed by Federal Express Priority Overnight service 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

Irving H. Picard, Trustee
c/o Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111.

Dated: June 16, 2010


Christopher Guhin, Esq.