

Helen Davis Chaitman (4266)
PHILLIPS NIZER LLP
666 Fifth Avenue
New York, NY 10103-0084
(212) 841-1320
hchaitman@phillipsnizer.com

Attorneys for Donald A. Benjamin

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiffs

vs.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

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

Donald A. Benjamin hereby objects to the Notice of Trustee's Determination of Claim dated June 9, 2009 and states as follows:

Background facts

1. On June 24, 1996, Benjamin established an individual retirement account ("IRA") with Bernard L. Madoff Investment Securities LLC ("Madoff") through NTC & Co, a qualified custodian. The account was designated NTC & Co. f/b/o Donald A. Benjamin, which bore Madoff account No. 1CM402 (the "Account").

2. During the period from June 24, 1996 through November 30, 2008, Benjamin deposited a total of \$1,684,009.39 into the Account. See Exh. A at 2.

3. Benjamin retired in 2001 at the age of 69 and began withdrawing funds from the Account in order to support himself. During the period from 2001 through 2007, Benjamin withdrew a total of \$1,455,045 and paid taxes on the money withdrawn. *Id.*

4. The November 30, 2008 market value of securities on the Account was \$4,175,700.77. See Exh. B.

5. On January 19, 2009, Benjamin sent a SIPC claim to Picard for the Account asserting a claim for securities in the amount of \$4,116,000, based upon the November 30, 2008 Madoff statement. See Exh. C.

6. On June 9, 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 but agreeing to recognize the claim (presumably for cash) in the amount of \$228,964.39, representing the difference between the sums Benjamin had invested and the sums he had withdrawn from the Account. See Exh. A. Picard offered to send Benjamin a check for \$228,964.39 upon execution by Benjamin of an Assignment and Release.

Grounds for objection

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

7. 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 withdrew funds from the Account, Benjamin paid ordinary income taxes on the

withdrawals from 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.

8. Picard has failed to state a basis in the Determination Letter for the position he has taken. 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)(15th 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”

9. The legislative history of the Securities Investor Protection Act (“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.

10. 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.

11. 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).

12. 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.

13. As indicated in paragraph 19 *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, Picard has invented his own definition of "net equity"

14. 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).

15. SIPA specifically prohibits SIPC from changing the definition of “net equity.” 15

U.S.C. § 78ccc(b)(4)(A).

16. 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.”).

17. In derogation of his obligations to carry out the provisions of SIPA, 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 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.

18. 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.

19. 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.

20. After six months of his tenure, Picard has identified only a handful of 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.

21. However, the fact that a few out of more than 8,000 Madoff investors may have been Madoff's co-conspirators does not justify SIPC's depriving the more than 8,000 remaining, totally innocent investors of their statutory maximum payment of \$500,000 in SIPC insurance.

22. Benjamin, like thousands of other investors, received monthly statements from Madoff indicating returns on his Madoff investment in the range 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 \$4,116,000 as reflected on the November 30, 2008 Madoff statement.

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

23. 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 (1st Dept. 2000)(awarding prejudgment interest on claims for unjust enrichment and conversion).

24. 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 condition payment of SIPC insurance on execution of a release.

25. Picard has conditioned payment to Benjamin of the \$228,964.39 SIPC payment which Picard does not dispute, on execution by Benjamin of a Partial Assignment and Release

that would “release and forever discharge the SIPA Trustee and SIPC . . . from any and all claims arising out of or relating to [their account], the Customer Claim filed with the SIPA Trustee. . . , and any and all circumstance giving rise to the Customer Claim.” There is no legal basis for requiring such a Partial Assignment and Release in exchange for SIPC insurance to which Benjamin is unconditionally entitled.

F. Picard has no power to claw back withdrawals from an IRA

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 (15th ed. 2008); *see also In re Dorholt, Inc.*, 224 F.3d 871, 873 (8th 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 agent in depriving Benjamin of the \$500,000 in SIPC insurance to which he is statutorily entitled.

29. Moreover, the Account was established pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, whose provisions preempt State fraudulent conveyance law, upon which Picard presumably relies pursuant to 11 U.S.C. § 544. 29 U.S.C. § 1144(a) (the provisions of ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section [1003(a)]. . . .")

30. As evidence of Congressional intent to protect ERISA-qualified plans, the Bankruptcy Code was amended in 2005 to protect such plans from the claims of creditors. 11 U.S.C. § 541(b)(7)(a)(i)(I) (exempting from property of the estate "any amount withheld by an employer from the wages of employees for payment as contributions to an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 . . ."). *See also, Patterson v. Shumate*, 504 U.S. 753 (1992)(holding that debtor's interest in an ERISA-qualified pension plan may be excluded from the property of the bankruptcy estate pursuant to 11 U.S.C. § 541(c)(2)).

G. Picard has violated SIPA by delaying the payment of SIPC insurance

31. Picard has breached his statutory obligation to "promptly" pay SIPC insurance or provide customers with replacement securities. 15 U.S.C. § 78fff-2(b)("... the trustee shall promptly discharge . . . all obligations of the debtor to a customer . . . by the . . . making of payments to or for the account of such customer . . ."). Picard has no right to delay payment to Benjamin of the undisputed portion of his claim.

Conclusion

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

33. Benjamin is entitled to have his claim recognized in the amount of \$4,116,000.00 consistent with the November 30, 2008 statement from Madoff.

34. Picard is not entitled to a release of any claims as a condition to Benjamin's receipt of \$500,000 in SIPC insurance.

June 30, 2009

PHILLIPS NIZER LLP

By s/s Helen Davis Chaitman

666 Fifth Avenue
New York, NY 10103-0084
(212) 841-1320
hchaitman@phillipsnizer.com

Attorneys for Donald Benjamin

EXHIBIT A

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008¹

NOTICE OF TRUSTEE'S DETERMINATION OF CLAIM

June 9, 2009

NTC & CO. FBO Donald A. Benjamin
152 Darters Lane
Manhasset, New York 11030-4024

Dear NTC & CO. FBO Donald A. 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 claim on BLMIS Account No. ICM402 designated as Claim Number 000980:

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

Your claim is **ALLOWED** for \$228,964.39, which is the amount of money you deposited with BLMIS for the purchase of securities, less subsequent withdrawals, as outlined in Table 1.

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.

TABLE 1	
DEPOSITS	
DATE	AMOUNT
6/24/96	\$800,000.00
2/23/98	\$35.00
3/4/98	\$200,000.00
6/1/00	\$199,907.00
6/6/00	\$35.00
6/20/00	\$58.00
5/16/01	\$300,000.00
12/27/01	\$35.00
12/17/02	\$39.93
1/12/05	\$15.13
2/21/06	\$45.17
1/16/08	\$164.74
7/8/08	\$183,674.42
Total deposits:	\$1,684,009.39
WITHDRAWALS	
DATE	AMOUNT
12/24/01	\$300,000.00
12/24/02	\$400,000.00
12/10/04	\$140,000.00
12/23/05	\$140,035.00
11/27/06	\$300,010.00
12/7/07	\$175,000.00
Total withdrawals:	\$1,455,045.00
Total deposits less withdrawals:	\$228,964.39

Your **ALLOWED CLAIM** of \$228,964.39 will be satisfied in the following manner:

The enclosed **RELEASE AND ASSIGNMENT** must be executed, notarized and returned in the envelope provided herewith. You also should provide the name of the custodian for your IRA. Upon receipt of the executed and notarized **RELEASE AND ASSIGNMENT**, and designation of your IRA custodian the Trustee will fully satisfy your **ALLOWED CLAIM** by sending you a check in the amount of \$228,964.39, with the funds being advanced by Securities Investor Protection Corporation pursuant to section 78fff-3(a)(1) of SIPA.

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 June 9, 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.

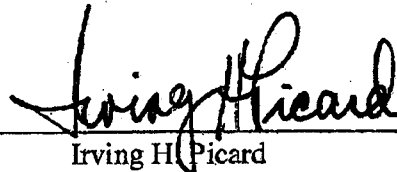
PLEASE TAKE FURTHER NOTICE: If you properly and timely file a written opposition, a hearing date for this controversy will be obtained by the Trustee and you will be notified of that hearing date. Your failure to appear personally or through counsel at such hearing will result in the Trustee's determination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



Irving H. Picard

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

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

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789-BRL

SIPA Liquidation

ASSIGNMENT AND RELEASE

KNOW ALL MEN BY THESE PRESENTS, that NTC & CO. FBO Donald A. Benjamin, located at 152 Darters Lane, Manhasset, New York 11030-4024 (hereinafter referred to as the "Assignor") in consideration of the payment of \$228,964.39 to satisfy his claim for customer protection (the "Customer Claim", having been designated Claim #000980) filed in the liquidation proceeding of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §78aaa et seq. ("SIPA") (see §§78fff-2(b), 78fff-2(d), and §78fff-3(a)(1) of SIPA), does for himself hereby assign, transfer and set over to Irving H. Picard as SIPA Trustee (the "SIPA Trustee") for the liquidation of BLMIS (see §78fff-2(b) of SIPA), and the Securities Investor Protection Corporation ("SIPC"), as subrogee to the extent of its cash advances to the SIPA Trustee for the satisfaction of the aforementioned Customer Claim (see §78fff-3(a)(1) of SIPA), any and all rights, including causes of action or claims, that Assignor now may have against BLMIS and/or any third party arising out of or relating to any fraudulent or illegal activity with respect to Assignor's BLMIS account (Account No. 1CM402, the "BLMIS Account"), which gave rise to the allowed Customer Claim for securities filed by

Assignor against BLMIS. Such assignment is only to the extent that Assignor has received satisfaction of the Customer Claim as set forth above.

Further, Assignor has not previously compromised or assigned any claim, cause of action or other right against BLMIS, its principals or agents or any third party arising out of or related to any fraudulent or illegal activity giving rise to the Customer Claim.

Upon reasonable request of the SIPA Trustee or SIPC, Assignor agrees to cooperate with the SIPA Trustee or SIPC in connection with any efforts of either to recover from the principals or agents of BLMIS or anyone else for amounts advanced by SIPC or paid by the SIPA Trustee to satisfy Assignor's Customer Claim in this SIPA liquidation proceeding. Such efforts to recover by the SIPA Trustee or SIPC, either to demand or pursue or to prosecute or settle any collection effort, action or proceeding therefore, shall be at the sole cost of the SIPA Trustee or SIPC.

Effective immediately and without further action, contingent only upon Assignor's receipt from the SIPA Trustee or his agent of a check in the amount of \$228,964.39 as set forth in the SIPA Trustee's Notice of Determination of the Customer Claim dated June 9, 2009, (the "Trustee's Determination"), and upon receipt by the SIPA Trustee of this executed and notarized Assignment and Release, the Assignor does for Assignor's executors, administrators, heirs and assigns hereby remise, release and forever discharge the SIPA Trustee and SIPC, as subrogee to the extent of its cash advances for the satisfaction of the Customer Claim, and, as the case may be, its officers, directors, professionals, employees, agents, successors and assigns, of and from any and all claims arising out of or relating to the Assignor's BLMIS Account, the Customer Claim filed with the SIPA Trustee as protected by the provisions of SIPA, and any and all circumstances giving rise to said Customer Claim which the Assignor now has, or hereafter may

have, for or by any reason, cause, matter or thing whatsoever from the beginning of the world to the date of the execution of this Assignment and Release, only to the extent that the SIPA Trustee and/or SIPC has paid monies to the Assignor to satisfy Assignor's Customer Claim.

Assignor acknowledges the sufficiency of the consideration to be received in accordance with the SIPA Trustee's Determination and under this Assignment and Release.

IN WITNESS WHEREOF, the undersigned has on this day set forth below duly executed this Assignment of Assignor's Customer Claim and Release, intending to be legally bound hereby.

By: _____
DONALD A. BENJAMIN

Sworn and subscribed before me this
____ day of _____, 2009.

Notary Public

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

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

****DUPLICATE**** FOR ACCOUNT NTC & CO.
DONALD A BENJAMIN

152 DARTERS LANE
MANHASSET NY 11030

7,116,000
4,036
80

PERIOD ENDING 11/30/08
PAGE 1
YOUR ACCOUNT NUMBER 1-CM402-3-0
YOUR TAX PAYER IDENTIFICATION NUMBER *****6253

DATE	BOUGHT RECEIVED	SOLD DELIVERED	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
				BALANCE FORWARD		242,342.75	
11/12	2,288		2413	WAL-MART STORES INC	55.830	127,830.04	
11/12	1,496		2915	INTERNATIONAL BUSINESS MACHS	87.270	130,614.92	
11/12	5,544		6739	EXXON MOBIL CORP	72.880	404,267.72	
11/12	6,072		7241	INTEL CORP	14.510	88,346.72	
11/12	2,904		11567	JOHNSON & JOHNSON	59.580	173,136.32	
11/12	3,960		15893	J.P. MORGAN CHASE & CO	38.530	152,736.80	
11/12	2,112		20218	COCA COLA CO	44.660	94,405.92	
11/12	1,232		24544	MCDONALDS CORP	55.370	68,264.84	
11/12	2,288		28870	MERCK & CO	28.550	65,413.40	
11/12	8,360		33196	MICROSOFT CORP	21.810	182,665.60	
11/12	4,224		37522	ORACLE CORPORATION	17.300	73,243.20	
11/12	1,672		50500	PEPSICO INC	56.410	94,383.52	
11/12	968		51002	APPLE INC	100.780	97,593.04	
11/12	7,128		54826	PFIZER INC	16.940	121,033.32	
11/12	1,672		55328	ABBOTT LABORATORIES	54.610	91,373.92	
11/12	3,168		59152	PROCTER & GAMBLE CO	64.080	203,131.44	
11/12	1,144		59654	AMGEN INC	59.160	67,724.04	
11/12	2,200		63478	PHILLIP MORRIS INTERNATIONAL	43.600	96,008.00	
11/12	5,280		63980	BANK OF AMERICA	21.590	114,206.20	
11/12	1,760		67804	QUALCOMM INC	33.770	59,505.20	
11/12	5,720		68306	CITI GROUP INC	12.510	71,785.20	
11/12	1,320		72130	SCHLUMBERGER LTD	49.480	65,365.60	
11/12	3,168		72632	COMCAST CORP	16.510	52,429.68	
				CL A			

CONTINUED ON PAGE 2



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

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

****DUPLICATE**** FOR ACCOUNT NTC & CO.
DONALD A BENJAMIN

152 DARTERS LANE
MANHASSET NY 11030

PERIOD ENDING
11/30/08

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YOUR ACCOUNT NUMBER
1-CM402-3-0

YOUR TAX PAYER IDENTIFICATION NUMBER
*****6253

DATE	BOUGHT RECEIVED	SOLD DELIVERED	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
11/12	6,248		76456	AT&T INC	27	168,945.00	
11/12	1,584		76958	CONOCOPHILIPS	52.510	83,238.84	
11/12	1,056		80782	UNITED PARCEL SVC INC CLASS B	52.040	54,996.24	
11/12	6,424		81284	CISCO SYSTEMS INC	16.730	107,729.52	
11/12	1,848		85108	U S BANCORP	29.530	54,644.44	
11/12	2,200		85610	CHEVRON CORP	73.430	161,634.00	
11/12	1,056		89434	UNITED TECHNOLOGIES CORP	53.160	56,178.96	
11/12	11,176		89936	GENERAL ELECTRIC CO	19.630	219,831.88	
11/12	2,992		93760	VERIZON COMMUNICATIONS	30.410	91,105.72	
11/12	264		94262	GOOGLE	337.400	89,083.60	
11/12	3,696		98086	WELLS FARGO & CO NEW	29.800	110,287.80	
11/12	2,640		98588	HEWLETT PACKARD CO	34.900	92,241.00	
11/12		3,950,000	20699	U S TREASURY BILL DUE 2/12/2009	99.936		3,947,472.00
11/12				2/12/2009 FIDELITY SPARTAN	DIV		106.02
11/12		90,375	15797	U S TREASURY MONEY MARKET DIV 11/12/08			90,375.00
11/12	34,795		25166	FIDELITY SPARTAN	1	34,795.00	
11/19				U S TREASURY MONEY MARKET FIDELITY SPARTAN	DIV		4.27
				U S TREASURY MONEY MARKET DIV 11/19/08			
				CONTINUED ON PAGE 3			



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

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11/19		34,795	50426	FIDELITY SPARTAN	1		34,795.00
11/19	275,000		55060	U S TREASURY MONEY MARKET U S TREASURY BILL DUE 03/26/2009	99.926	274,796.50	
11/19	23,651		59465	3/26/2009 FIDELITY SPARTAN U S TREASURY MONEY MARKET	1	23,651.00	
				NEW BALANCE		488,214.60	
				SECURITY POSITIONS	MKT PRICE		
	6,248			AT&T INC	28.560		
	1,672			ABBOTT LABORATORIES	52.390		
	1,144			AMGEN INC	55.540		
	968			APPLE INC	92.670		
	5,280			BANK OF AMERICA	16.250		
	2,200			CHEVRON CORP	79.010		
	6,424			CISCO SYSTEMS INC	16.540		
	5,720			CITI GROUP INC	8.290		
	2,112			COCA COLA CO	46.870		
	3,168			COMCAST CORP	17.340		
	1,584			GL A			
	5,544			CONDCOPHILIPS	52.520		
	11,176			EXXON MOBIL CORP	80.150		
				GENERAL ELECTRIC CO	17.170		
				CONTINUED ON PAGE	4		



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DATE	BOUGHT RECEIVED	SOLD DELIVERED	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
	264			GOOGLE	292.960		
	2,640			HEWLETT PACKARD CO	35.280		
	6,072			INTEL CORP	13.800		
	1,496			INTERNATIONAL BUSINESS MACHS	81.600		
	3,960			J.P. MORGAN CHASE & CO	31.660		
	2,904			JOHNSON & JOHNSON	58.580		
	1,232			MCDONALDS CORP	58.750		
	2,288			MERCK & CO	26.720		
	8,360			MICROSOFT CORP	20.220		
	4,224			ORACLE CORPORATION	16.090		
	1,672			PEPSICO INC	56.700		
	7,128			PFIZER INC	16.430		
	2,200			PHILLIP MORRIS INTERNATIONAL	42.160		
	3,168			PROCTER & GAMBLE CO	64.350		
	1,760			QUALCOMM INC	33.570		
	1,320			SCHLUMBERGER LTD	50.740		
	23,651			FIDELITY SPARTAN	1		
	1,848			U S TREASURY MONEY MARKET			
	1,056			U S BANCORP	26.980		
				UNITED PARCEL SVC INC	57.600		
	275,000			CLASS B			
				U S TREASURY BILL	99.971		
				DUE 03/26/2009			
	1,056			3/26/2009			
				UNITED TECHNOLOGIES CORP	48.530		
				CONTINUED ON PAGE 5			



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	2,992			VERIZON COMMUNICATIONS	32.650		
	2,288			WAL-MART STORES INC	55.880		
	3,696			WELLS FARGO & CO NEW	28.890		
				MARKET VALUE OF SECURITIES			
				LONG			
				SHORT			
				4,175,700.77			



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INVESTMENT SECURITIES LLC
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MEMBER SIPC
Madoff Securities International Limited
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Mayfair, London W1J 8DT
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DATE	BOUGHT RECEIVED	SOLD DELIVERED	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
				BALANCE FORWARD			242,343.00
11/12		88	41848	S & P 100 INDEX	15.800		138,952.00
11/12	88		46174	NOVEMBER 460 CALL			
				S & P 100 INDEX	17.800	156,728.00	
11/19		88	32279	NOVEMBER 450 PUT			
				S & P 100 INDEX	26		228,712.00
11/19	88		36604	DECEMBER 430 CALL			
				S & P 100 INDEX	30	264,088.00	
11/19	88		40929	DECEMBER 420 PUT			
				S & P 100 INDEX	3	26,488.00	
11/19		88	45254	NOVEMBER 460 CALL			
				S & P 100 INDEX	37		325,512.00
				NOVEMBER 450 PUT			
				NEW BALANCE			488,215.00
		88		SECURITY POSITIONS	MKT PRICE		
				S & P 100 INDEX	23.300		
	88			DECEMBER 430 CALL			
				S & P 100 INDEX	16.500		
				DECEMBER 420 PUT			
				MARKET VALUE OF SECURITIES			
				LONG			
				SHORT			
				145,200.00			205,040.00-