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Time: 4:00 p.m. EST

*Special Counsel to Irving H. Picard, Esq., Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and
Alan Nisselson, the Chapter 7 Trustee of Bernard L. Madoff*

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

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (LGB)
SIPA Liquidation
(Substantively Consolidated)

**FORTY-FIFTH APPLICATION OF WINDELS MARX LANE & MITTENDORF, LLP
FOR ALLOWANCE OF INTERIM COMPENSATION FOR SERVICES RENDERED
AND REIMBURSEMENT OF ACTUAL AND NECESSARY EXPENSES INCURRED
FROM APRIL 1, 2024 THROUGH JULY 31, 2024**

Windels Marx Lane & Mittendorf, LLP (“Windels Marx” or the “Firm”) as special
counsel to Irving H. Picard as trustee (the “Trustee”) for the substantively consolidated
liquidation proceeding of Bernard L. Madoff Investment Securities LLC (“BLMIS” or
“Debtor”), and to Alan Nisselson as trustee (the “Chapter 7 Trustee”) for the Chapter 7
estate of Bernard L. Madoff (“Madoff”), pursuant to the Orders of the Court dated July 16,

2009 [Docket No. 327] and November 23, 2011 [Docket No. 4547], respectfully submits this application (the “Forty-Fifth Application”) for an order pursuant to section 78eee(b)(5) of the Securities Investor Protection Act (“SIPA”), 15 U.S.C. § 78eee(b)(5), sections 330 and 331 of title 11 of the United States Code, 11 U.S.C. §§ 101 et. seq. (the “Bankruptcy Code”), and Rule 2016(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), allowing and awarding interim compensation for services performed by Windels Marx for the period commencing April 1, 2024 through and including July 31, 2024 (the “Compensation Period”) in the amount of \$6,581,028.00 of which 80%, or \$5,264,822.40 is to be paid currently and 20%, or \$1,316,205.60, is to be deferred through the conclusion of the liquidation proceeding or further order of the Court, and reimbursement of Windels Marx’s actual and necessary expenses incurred during the Forty-Fifth Compensation Period in the amount of \$19,103.05, and in support thereof, respectfully represents as follows:

I. PRELIMINARY STATEMENT

1. During this Forty-Fifth Compensation Period, Windels Marx continued to assist the Trustee and his counsel, Baker & Hostetler LLP (“Baker”), in their efforts to recover customer property for the victims of Madoff’s fraud.

2. Among other things, Windels Marx spent significant time during the Compensation Period on the firm’s active subsequent transfer cases as well as the Baker initial and subsequent transfer cases with which Windels Marx assists. This work includes, among other things, drafting, serving, receiving, and responding to requests for production of documents and interrogatories and responses to same, meeting and conferring as to same,

reviewing documents produced in connection with same, preparing and serving subpoenas, conducting document reviews and factual investigations, and engaging in related matters.

3. Windels Marx also expended considerable time during the Compensation Period on matters common to all subsequent transfer cases, including the comprehensive review of recent document productions for relevance to cases, and researching various discovery issues, affirmative defenses, foreign jurisdictional matters, and other legal issues and theories of the Trustee and defendants, as anticipated to be raised in motion practice and as relevant to discovery.

4. The following discussion and the materials attached to this Forty-Fifth Application cover the major categories of services for which allowance of compensation is sought.

II. PROCEDURAL BACKGROUND

The SIPA Liquidation

5. On December 11, 2008, the United States Securities and Exchange Commission (the “SEC”) filed a complaint in the United States District Court for the Southern District of New York (the “District Court”) against defendants Madoff and BLMIS (Case No. 08 CV 10791) (the “SEC Action”). The SEC complaint alleged that Madoff and BLMIS engaged in fraud through the investment advisory activities of BLMIS.

6. In the SEC Action, the SEC consented to a combination of its own action with an application of the Securities Investor Protection Corporation (“SIPC”). Thereafter, pursuant to section 78eee(a)(3) of the SIPA, SIPC filed an application in the District Court alleging, inter alia, that BLMIS was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protection afforded by SIPA.

7. On December 15, 2008, District Judge Stanton granted the SIPC application, which among other things:

- appointed Irving H. Picard as the SIPA Trustee for the liquidation of the business of BLMIS pursuant to 15 U.S.C. § 78eee(b)(3);
- appointed Baker as counsel to the SIPA Trustee pursuant to 15 U.S.C. § 78eee(b)(3); and
- removed the liquidation proceeding (the “SIPA Proceeding”) to this Court pursuant to 15 U.S.C. § 78eee(b)(4).

The Bernard L. Madoff Chapter 7 Case

8. On April 13, 2009, Blumenthal & Associates Florida General Partnership, Martin Rappaport Charitable Remainder Unitrust, Martin Rappaport, Marc Cherno and Steven Morganstern (collectively, the “Petitioning Creditors”), through their attorneys, Milberg LLP, filed an involuntary petition for relief under Chapter 7 of the Bankruptcy Code against Madoff.

9. On April 16, 2009, the Petitioning Creditors filed a motion to appoint a trustee in Madoff’s case, and on that same date, the Court entered an Order to Show Cause Why the Court Should Not Enter an Order Directing the United States Trustee to Appoint an Interim Trustee.

10. On April 20, 2009, the Court entered an Order directing the Office of the United States Trustee for the Southern District of New York (the “UST”) to appoint an interim trustee to perform the duties of trustee as set forth in Bankruptcy Code §§ 701 and 704, pursuant to which the UST appointed Alan Nisselson as the Chapter 7 Trustee on April 21, 2009.

11. On April 24, 2009, the Court entered an Order authorizing and empowering the Chapter 7 Trustee to retain Windels Marx to represent him in the Madoff case, effective as of April 21, 2009.

12. On May 5, 2009, the SIPA Trustee and SIPC filed a joint motion for entry of an order pursuant to section 105(a) of the Bankruptcy Code substantively consolidating the Madoff estate into the SIPA Proceeding (the “Substantive Consolidation Motion”).

13. On June 9, 2009, after the Chapter 7 Trustee filed a Response to the Substantive Consolidation Motion, the Court entered a Consent Order (“Consent Order”) [Docket No. 252] which, among other things, approved the Substantive Consolidation Motion, *nunc pro tunc* to December 11, 2008.

14. On July 16, 2009, this Court entered an Order granting the Trustee’s motion to retain Windels Marx as special counsel on behalf of the consolidated estate, *nunc pro tunc* as of June 9, 2009 [Docket No. 327], finding that Windels Marx is disinterested pursuant to section 78eee(b)(6) of SIPA, section 327(a) of the Bankruptcy Code, and Bankruptcy Rule 2014(a) and is therefore in compliance with the disinterestedness requirement in section 78eee(b)(3) of SIPA, section 327(a) of the Bankruptcy Code, and Bankruptcy Rule 2014(a).

15. On November 23, 2011, this Court entered an Order [Docket No. 4547] making certain provisions of this Court’s Order Establishing Procedures Governing Interim Monthly Compensation of the Trustee and Baker & Hostetler LLP, amended and superseded in its entirety on June 1, 2011, applicable to Windels Marx, *nunc pro tunc* as of June 1, 2011.

III. SPECIAL COUNSEL'S EXPERIENCE

16. Windels Marx engages in the general practice of law, and has substantial expertise in such areas as bankruptcy, commercial litigation, securities, tax and corporate law.

17. In particular, the senior Windels Marx attorneys in charge of this matter specialize in advising Chapter 7 and Chapter 11 bankruptcy trustees in connection with complex bankruptcy litigation related to, among other things, asset analysis and recovery.

IV. SUMMARY OF SERVICES

18. The services rendered by Windels Marx during the four-month Forty-Fifth Compensation Period are described below. In rendering professional services to the Trustee and the Chapter 7 Trustee, Windels Marx's legal team has been composed of professionals with extensive experience in bankruptcy and complex commercial litigation, securities, tax, and corporate law.

19. Windels Marx professionals have worked closely with the Trustee, his counsel at Baker, and the Trustee's other retained professionals to coordinate their efforts in order to maximize efficiency and to avoid any duplication of effort.

20. This Forty-Fifth Application is intended to serve as a summary description of the more significant services rendered by Windels Marx during the Forty-Fifth Compensation Period. The following sections provide an overview of those services, sorted by the matter and task codes used by Windels Marx for specific categories of work.

21. Matter Number 02 is the general matter number used for tasks that affect all proceedings commenced by Windels Marx on behalf of the Trustee, and task numbers have

been assigned for specific categories of work to permit a more detailed analysis of the fees incurred.¹

22. Matter Numbers 03-25 relate to specific projects, adversary proceedings, or groups of adversary proceedings commenced, being handled, and/or being supervised by Windels Marx on behalf of the Trustee. Common tasks conducted by Windels Marx in these projects, adversary proceedings, or groups of adversary proceedings include the drafting of reports, analyses, and internal memoranda; the filing of papers and the scheduling of matters with the Bankruptcy and/or District Courts; on-going coordination with Baker regarding investigation and litigation strategy; and/or discussions with opposing counsel regarding representation, service, and appearance issues, extensions of time to respond, adjournments of pre-trial conferences, discovery, and settlement. For the sake of brevity, the descriptions of specific projects, adversary proceedings, or groups of adversary proceedings in paragraphs 23 through 53 below will not repeat these common tasks, but will be limited to matter-specific tasks and case activity that occurred during the Compensation Period.

A. MADOFF GENERAL (MATTER 02)

Task Code 004: Case Administration (3.90 hours)

23. This category relates to various tasks across cases, including (i) research projects and memoranda of general applicability for use by Windels Marx and/or Baker, (ii) the on-going review and reporting internally and to SIPC and Baker on the status of cases and case-wide issues, (iii) the on-going review, organizing, and docketing of case-related information into Baker's and Windels Marx's central databases for use across all Windels

¹ Matter 01 is reserved for certain non-billable time entries.

Marx and Baker teams, (iv) coordinated tasks affecting or related to one or more Windels Marx and/or Baker cases, and (v) general administrative tasks.

24. Time entries during this Compensation Period were *de minimis* and related to updating hearing dates and producing weekly case status reports.

Task Code 007: Fee Applications (157.40 hours)

25. This category relates to the Firm's preparation of Windels Marx's monthly billing statements to SIPC and the Trustee, including, among other things, time spent by attorneys and paraprofessionals in reviewing the Windels Marx time and expense details and schedules before they are submitted to SIPC and the Trustee; preparation of Windels Marx's Applications for Interim Compensation; and other tasks related thereto.

Task Code 020: Internal Office Meetings (183.00 hours)

26. This category covers internal Windels Marx strategy and case management sessions related to the Firm's pending adversary proceedings. Through these internal meetings and discussions, Windels Marx seeks to ensure the effective use of the time of all timekeepers working on matters, to avoid duplicative efforts, and to provide a consistent approach to the adversary proceedings outstanding during this period and other case-related legal matters being handled by the Firm.

Task Code 041: Discovery, Document Review, Document Production (3.20 hours)

27. This category relates to discovery and related issues not specific to a Windels Marx case, such as document productions in response to third party subpoenas, productions of documents produced by parties with whom Baker has a conflict, confidentiality issues concerning these document productions, and other discovery-related

work that is responsive to requests from Baker or applicable generally to Windels Marx's cases.

28. Time entries during this Compensation Period were *de minimis* and related to communications regarding the confidentiality of certain documents.

B. CREDIT SUISSE (MATTER 12) (1,148.90 hours)

29. This category relates to an avoidance action filed on December 12, 2011 to recover subsequent transfers of BLMIS Customer Property from certain BLMIS feeder funds to defendants currently totaling approximately \$333 million. *Picard v. Credit Suisse AG, et al.*, Adv. Pro. No. 11-02925 (Bankr. S.D.N.Y.) (LGB). This case was dismissed by virtue of this Court's November 2016 Order regarding extraterritoriality and comity (the "ET Order") and was then returned to this Court based on the Second Circuit's reversal of that dismissal and the U.S. Supreme Court's denial of defendants' petition for a writ of certiorari in June 2020 (the "ET Appeal"). Thereafter, this and the other subsequent transfer cases named herein were awaiting disposition of the Second Circuit appeal as to the good faith standard and burden for subsequent transfer cases. On August 30, 2021, the Second Circuit held that the standard for good faith was inquiry notice and that the burden of pleading good faith rested with the defendants (the "Good Faith Decision"). As a result, this case is now moving forward.

30. In addition to the tasks outlined in ¶ 22, time entries during this Compensation Period related to (i) engaging in next steps in document discovery, including drafting proposed search terms, custodians, and repositories and negotiating with opposing counsel on same and conducting research on various production-related issues; (ii) preparing for and participating in meet and confers with opposing counsel as to the

Trustee's discovery requests and engaging in related written correspondence; (iii) reviewing and analyzing documents produced by Defendants; (iv) drafting, serving and negotiating third party subpoenas, including review of relevant documents, and addressing responses to same; (v) review of various new productions in other cases as may be relevant to this and the other Credit-Suisse-related matters, as well as updating protocols for further review; and (vi) attending to various on-going tasks and open issues across Credit Suisse-related cases. Notably, to the extent work was performed that simultaneously crossed over with other Credit Suisse-related cases (Zephyros, Mistral, and Clariden Leu, below), time was entered into this matter number.

C. ZEPHYROS (MATTER 14) (80.80 hours)

31. This category relates to an avoidance action filed on April 5, 2012 to recover subsequent transfers of Customer Property from certain BLMIS feeder funds to defendant currently totaling approximately \$95 million. *Picard v. Zephyros Limited*, Adv Pro. No. 12-01278 (Bankr. S.D.N.Y.) (LGB). This case was dismissed in part by virtue of the ET Order and then restored in full based on the ET Appeal. As a result of the Good Faith Decision, this case is now proceeding.

32. In addition to the tasks outlined in ¶ 22, time entries during this Compensation Period related to (i) drafting and revising third party subpoenas, including review of relevant documents in support of same, (ii) engaging in next steps in document discovery, including drafting and serving interrogatories and analyzing documents relevant to defendant's defenses.

D. MISTRAL (MATTER 15) (25.60 hours)

33. This category relates to an avoidance action filed on April 5, 2012 to recover subsequent transfers of Customer Property from certain BLMIS feeder funds to defendant currently totaling \$3.2 million. *Picard v. Mistral (SPC)*, Adv Pro. No. 12-01273 (Bankr. S.D.N.Y.) (LGB). This case was dismissed in part by virtue of the ET Order. As a result of the Good Faith Decision, this case is now proceeding.

34. In addition to the tasks outlined in ¶ 22, time entries during this Compensation Period related to (i) drafting and revising third party subpoenas, including review of relevant documents and communications with opposing counsel in support of same and (ii) engaging in next steps in document discovery, including drafting and serving interrogatories.

E. SOCIETE GENERALE (MATTER 16) (947.70 hours)

35. This category relates to an avoidance action filed on May 30, 2012 to recover subsequent transfers of Customer Property from certain BLMIS feeder funds to defendants currently totaling approximately \$137 million. *Picard v. Societe Generale Private Banking (Suisse) S.A. (f/k/a SG Private Banking Suisse S.A.), et al.*, Adv. Pro. No. 12-01677 (Bankr. S.D.N.Y.) (LGB). This case was dismissed by virtue of the ET Order and then returned to this Court based on the ET Appeal. As a result of the Good Faith Decision, this case is now proceeding.

36. In addition to the tasks outlined in ¶ 22, time entries during this Compensation Period primarily related to (i) engaging in next steps in document discovery, including research on the application of various relevant discovery rules, drafting and finalizing bank subpoenas, preparing for next steps in on-going internal investigations, and

determining scope of foreign counsel needs or relevance, (ii) analyzing defendants' responses and objections to the Trustee's document requests and interrogatories and corresponding with counsel further as to same; (iii) preparing for and participating in meet and confers with opposing counsel as to the Trustee's discovery requests and potential settlement, and engaging in related written correspondence, (iv) reviewing and analyzing new documents produced by defendants and corresponding with counsel as to same; and (v) review of various new productions in other cases as may be relevant to this matter.

F. ROYAL BANK OF CANADA (MATTER 17) (1,237.10 hours)

37. This category contains entries related to two avoidance actions. The first action relates to an avoidance action filed on June 6, 2012 to recover subsequent transfers of Customer Property from certain BLMIS feeder funds to defendants currently totaling approximately \$77 million. *Picard v. Royal Bank of Canada*, Adv. Pro. No. 12-01699 (Bankr. S.D.N.Y.) (LGB) ("RBC").

38. The second action under Matter 17 relates to an avoidance action filed on June 6, 2012 to recover subsequent transfers of Customer Property from certain BLMIS feeder funds to Defendants affiliated with Royal Bank of Canada, currently totaling approximately \$66 million. *Picard v. Banque Internationale a Luxembourg S.A. (f/k/a Dexia Banque Internationale a Luxembourg S.A.)*, Adv. Pro. No. 12-01698 (Bankr. S.D.N.Y.) (LGB) ("RBC-BIL").

39. These cases were dismissed in part by virtue of the ET Order and then restored in full based on the ET Appeal. As a result of the Good Faith Decision, these cases are now proceeding.

40. In addition to the tasks outlined in ¶ 22, time entries during this Compensation Period related to (i) engaging in next steps in document discovery, including research on the application of various relevant discovery rules and updating internal information, (ii) reviewing and analyzing defendants' responses and objections to Trustee's document requests and interrogatories and corresponding as to same; (iii) analyzing documents produced by defendants and corresponding as to same; (iv) preparing for and participating in meet and confers with opposing counsel as to the Trustee's discovery requests and engaging in related written correspondence, (v) review of relevant documents and bank account information in relation to drafting and serving bank subpoenas, and (vi) review of various new productions in other cases as may be relevant to these matters, as well as updating protocols for same.

G. CREDIT SUISSE (AS SUCCESSOR-IN-INTEREST TO CLARIDEN LEU) (MATTER 18) (2,455.10 hours)

41. This category relates to an avoidance action filed on May 30, 2012, amended July 30, 2012, to recover subsequent transfers of Customer Property from certain BLMIS feeder funds to defendant currently totaling approximately \$47 million. *Picard v. Credit Suisse AG, as successor-in-interest to Clariden Leu AG and Bank Leu AG*, Adv. Pro. No. 12-01676 (Bankr. S.D.N.Y.) (LGB). This case was dismissed by virtue of the ET Order and then returned to this Court based on the ET Appeal. As a result of the Good Faith Decision, this case is now proceeding.

42. In addition to the tasks outlined in ¶ 22, time entries during this Compensation Period primarily related to (i) engaging in next steps in document discovery, including finalizing and serving interrogatories and conducting research on various persons identified in disclosures and otherwise; (ii) preparing for and meeting and conferring with

opposing counsel as to the Trustee's discovery requests and engaging in related written correspondence; (iii) drafting and serving third party subpoenas and review of relevant documents for same; and (vi) extensive review of new and existing productions in other cases as may be relevant to this matter.

H. TRINCASTAR (MATTER 19) (529.60 hours)

43. This category relates to an avoidance action filed on September 22, 2011 to recover subsequent transfers of Customer Property from a BLMIS feeder fund to defendant totaling approximately \$13.3 million. *Picard v. Trincastar Corp.*, 11-02731 (Bankr. S.D.N.Y.) (LGB). This case was dismissed by virtue of the ET Order and then returned to this Court based on the ET Appeal. As a result of the Good Faith Decision, this case is now proceeding.

44. In addition to the tasks outlined in ¶ 22, time entries during this Compensation Period primarily related to (i) engaging in next steps in document discovery, including drafting and revising responses and objections to defendant's first set of requests for production, updating and revising search terms, and reviewing and analyzing defendant's responses and objections to Trustee's document requests and interrogatories and responding to same; (ii) preparing for and participating in meet and confers with opposing counsel as to the Trustee's discovery requests; and (iii) engaging in related written correspondence as to scope of defendant's document sources and analyses of same.

I. COORDINATED CASES (MATTER 20) (1,455.30 hours)

45. This category relates to a group of ten subsequent transferee cases, filed by Baker and staffed with Baker attorneys, which Howard Simon and Kim Longo are supervising, with supporting work by other Windels attorneys, to facilitate the coordination

of common information, issues, and documents between the firms and take advantage of staffing efficiencies. These “Coordinated Cases” were dismissed by virtue of the ET Order and then returned to this Court based on the ET Appeal. As a result of the Good Faith Decision, these cases are now proceeding.

46. This category also relates to work performed at Baker Hostetler’s request in connection with (i) the Tremont group of Madoff feeder funds, and application of same to all Windels Marx and Baker subsequent transferee cases, (ii) additional, specific subsequent transfer matters for which Baker from time to time seeks assistance, and (iii) participation on the supervisory review committee responsible for reviewing all of the Trustee’s amended subsequent transfer complaints.

47. Time entries during this Compensation Period related largely to working on fact discovery in the Coordinated Cases, including (i) drafting and negotiating discovery requests, including search terms and custodians for same, as well as determining next steps in internal investigations; (ii) addressing foreign discovery issues; (iii) drafting third party subpoenas; (iv) analyzing a possible appeal on sovereign immunity; (v) reviewing responses and objections to discovery requests and corresponding as to same; (vi) preparing for and participating in meet and confers with opposing counsel as to the Trustee’s discovery requests and engaging in related written correspondence; (vii) reviewing various new document productions in other cases as may be relevant to these matters; and (viii) participation in settlement negotiations in certain cases.

48. As to Tremont, time entries also involved participating in team meetings and reviewing various documents in connection with preparations for litigation on issues relevant to initial transfer avoidance.

**J. CASE-WIDE SUBSEQUENT TRANSFER LITIGATION (MATTER 23)
(806.00 hours)**

49. This category relates to any and all omnibus-style decisions, motion practice, research, or other tasks related to Windels Marx's subsequent transfer cases globally or case-wide tasks needed by the Trustee with respect to subsequent transfer cases. Time entries during this Compensation Period related to (i) work on research memoranda as to various defenses, remedies, and discovery related issues; (ii) reviewing and analyzing recent document productions in further support of allegations across cases, as well as updating protocols for same; (iii) preparing for upcoming discovery across cases, including discussions on structure, staffing, and protocols for coordination of discovery efforts, determining upcoming needs, addressing template language for discovery documents and communications, and determining next steps for investigations and subpoenas; and (iv) preparing for and participating in various subsequent transfer-related team leader meetings both with Baker and internally as well as other on-going analyses and communications within and amongst teams.

K. NAIDOT (MATTER 24) (187.10 hours)

50. This category relates to an avoidance action filed in September 2011 to recover subsequent transfers from Fairfield Sentry totaling approximately \$13.65 million. *Picard v. Naidot & Co.*, Adv. Pro. No. 11-02733 (Bankr. S.D.N.Y.) (LGB). Windels Marx has provided support to Baker on this action since February 2016, and in June 2021 was formally substituted in as counsel. This case was dismissed by virtue of the ET Order, and it was returned to this Court based on the ET Appeal. As a result of the Good Faith Decision, this case is now proceeding.

51. Time entries during this Compensation Period related to (i) preparation for discovery, including drafting proposed search terms and custodian lists and reviewing same from defendant, as well as reviewing results of investigations and determining next steps in same; (ii) reviewing and analyzing defendants' responses and objections to Trustee's document requests and correspondence with counsel as to same; (iii) preparing for and participating in meet and confers with opposing counsel as to the Trustee's discovery requests; and (iv) reviewing recent document productions in support of upcoming discovery, as well as updating protocols for same.

L. LEGACY (MATTER 25) (6,337.60 hours)

52. This category relates to *Picard v. Legacy, et al.*, Adv. Pro. No. 10-05286 (Bankr. S.D.N.Y.) (LGB), an initial transferee case, and *Picard v. Mayer, et al.*, Adv. Pro. No. 20-01316 (Bankr. S.D.N.Y.) (LGB), a recovery action for subsequent transfers out of Legacy. This matter is being handled by Baker, but since December 2023, Windels Marx has been providing support to Baker in connection with: (i) the review of documents produced by defendants in the two cases and by relevant third parties that have been subpoenaed; (ii) the drafting of Reports to the Court as to the status of discovery; and (iii) the preparation of fact and expert discovery in the subsequent transfer case.

53. Time entries during this Compensation Period related to (i) as to document reviews, comprehensively analyzing and reviewing for both relevance and substance the substantial volume of document productions received from defendants in advance of the close of fact discovery in the initial transfer case, (ii) determining review protocols in connection with the initial transfer and subsequent transfer cases, (iii) coordinating internally and with Baker as to next steps in light of bifurcation of cases, and (iv) as to the

subsequent transfer case, conducting research as to the various theories of liability at issue and reviewing past expert deposition testimony and other documents relevant to those issues.

V. COMPENSATION REQUESTED

54. During the Forty-Fifth Compensation Period, Windels Marx expended 15,588.30 hours in the rendition of professional and paraprofessional services on behalf of the Trustee and the Chapter 7 Trustee, resulting in a blended attorney hourly rate of \$425.80 for fees incurred. The blended rate for all professionals was \$422.99.

55. Prior to filing this Forty-Fifth Application, Windels Marx provided to SIPC and the Trustee (i) its April 1, 2024 through July 31, 2024 monthly statements setting forth the Firm's total fees for services rendered and expenses incurred on behalf of the consolidated estate for each month during the period April 1, 2024 through July 31, 2024 in the aggregate amount of \$7,487,376.06 and \$19,740.55, respectively, and (ii) a draft of this Forty-Fifth Application. The Firm wrote off certain unbilled and billed time, and SIPC's staff made certain additional adjustments and suggestions, which were adopted by Windels Marx. After such write-offs and adjustments (and the 10% discount), Windels Marx's April 1, 2024 through July 31, 2024 monthly statements reflected total fees and expenses of \$6,581,028.00 and \$19,103.05, respectively.

56. Specifically, Windels Marx's total fees and expenses for this Forty-Fifth Compensation Period were \$7,487,376.06 and \$19,740.55, respectively. In connection with preparing each of the four monthly statements and this Forty-Fifth Application, Windels Marx voluntarily (i) wrote off unbilled time of \$112,784.40, (ii) wrote off billed time of \$62,338.33 and (iii) reduced its total remaining fees of \$7,312,253.33 to \$6,581,028.00 by

discounting the Firm's rates by 10% at SIPC's request (resulting in a voluntary reduction of \$906,348.06 or approximately 12.11% of Windels Marx's total fees). Windels Marx also agreed to write off expenses customarily charged to other clients in the amount of \$637.50, resulting in \$19,103.05 of remaining expenses. Such fees and expenses are reasonable based on the customary compensation charged by comparably skilled practitioners in the Chapter 7 and 11 Cases and comparable bankruptcy and non-bankruptcy cases in a competitive national legal market. Total hours expended after all reductions equal 15,558.30.

57. There is no agreement or understanding among the Trustee, Windels Marx or any other person, other than members of Windels Marx, for sharing of compensation to be received for services rendered in this case.

58. This Forty-Fifth Application has been prepared in accordance with the Amended Guidelines for Fees and Disbursements of Professionals in Southern District of New York Bankruptcy Cases adopted by the Court on February 5, 2013 (the "Local Guidelines"). Pursuant to the Local Guidelines, the certification of Howard L. Simon, Esq. regarding compliance with the same is attached hereto as Exhibit A.

59. Exhibit B annexed hereto provides a schedule of Windels Marx professionals and paraprofessionals who have provided services during the Forty-Fifth Compensation Period, the capacity in which each individual is employed by the Firm, the year in which each attorney was licensed to practice law in New York, the hourly billing rate charged by Windels Marx for services provided by each individual and the aggregate number of hours billed by each individual. The 10% discount (as described above) is already reflected in the total amount billed.

60. Exhibit C annexed hereto provides a schedule of the expenses for which reimbursement is requested. The requested expenses are customarily charged to and paid by Windels Marx's bankruptcy and non-bankruptcy clients. At SIPC's request, Windels Marx has not charged for local travel expenses and overtime meals, which categories of expenses are regularly charged to and paid by Windels Marx's clients.

61. Exhibit D annexed hereto is a summary by matter and task code of services performed by Windels Marx from April 1, 2024 through July 31, 2024.

62. To the extent that time or disbursement charges for services rendered or disbursements incurred relate to the Forty-Fifth Compensation Period, but were not classified or processed prior to the preparation of this Forty-Fifth Application, Windels Marx reserves the right to request additional compensation for such services and reimbursement of such expenses in a future application.

VI. WINDELS MARX'S REQUEST FOR INTERIM COMPENSATION SHOULD BE GRANTED

63. Section 78eee(b)(5)(A) of SIPA provides in pertinent part that, upon appropriate application and after a hearing, "[t]he court shall grant reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred ... by a trustee ..." Section 78eee(b)(5)(C) of SIPA specifically establishes SIPC's role in connection with applications for compensation and the consideration the Court should give to SIPC's recommendation concerning fees. That section provides as follows:

In any case in which such allowances are to be paid by SIPC without reasonable expectation of recoupment thereof as provided in this Chapter and there is no difference between the amounts requested and the amounts recommended by SIPC, the court shall award the amounts recommended by SIPC. In determining the amount of allowances in all other cases, the court shall give due consideration to the nature,

extent, and value of the services rendered, and shall place considerable reliance on the recommendations of SIPC.

64. To the extent the general estate is insufficient to pay such allowances as an expense of administration, section 78eee(b)(5)(E) of SIPA requires SIPC to advance the funds necessary to pay the compensation of Windels Marx (*see* section 78fff-3(b)(2) of SIPA).

65. Based on the allocation process set forth in SIPA, the Trustee has determined at this time that he has no reasonable expectation that the general estate will be sufficient to make any distribution to general creditors or pay any administrative expenses. That is, the Trustee believes that any assets allocated to the BLMIS general estate will be exhausted prior to his being able to reimburse SIPC fully. The Trustee has been advised by SIPC that it concurs with this belief of the Trustee. Accordingly, any fees and expenses allowed by this Court will be paid from advances by SIPC without any reasonable expectation by SIPC of recoupment thereof.

66. Therefore, with respect to this Forty-Fifth Application, Windels Marx requests that consistent with section 78eee(b)(5)(C) of SIPA, the Court “award the amounts recommended by SIPC.” *See In re Bell & Beckwith*, 112 B.R. 876 (Bankr. N.D. Ohio 1990). Windels Marx expects that SIPC will file its recommendation to the Court with respect to this Forty-Fifth Application prior to the hearing, currently scheduled for December 18, 2024.

67. Windels Marx submits that the request for interim allowance of compensation made through this Forty-Fifth Application is reasonable and complies with the provisions of the Bankruptcy Code governing applications for compensation and reimbursement of expenses, pursuant to section 78eee(b)(5) of SIPA.

VII. CONCLUSION

68. Windels Marx respectfully submits that the services rendered during the Forty-Fifth Compensation Period merit the approval of the fees and disbursements requested herein, and respectfully requests that the Court enter an Order: (i) allowing and awarding \$6,581,028.00 (of which 80%, or \$5,264,822.40 is to be paid currently, and 20%, or \$1,316,205.60 is to be deferred through the conclusion of the liquidation proceeding or further order of the Court) as an interim payment for professional services rendered by Windels Marx during the Forty-Fifth Compensation Period, and \$19,103.05 as reimbursement of the actual and necessary costs and expenses incurred by the Firm in connection with the rendition of such services and (ii) granting such other and further relief as the Court may deem just and proper.

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Dated: New York, New York
October 25, 2024

Respectfully submitted,

WINDELS MARX LANE & MITTENDORF, LLP
*Special Counsel for Irving H. Picard, Trustee for
the SIPA Liquidation of Bernard L. Madoff
Investment Securities LLC and Alan Nisselson, the
Chapter 7 Trustee of Bernard L. Madoff*

/s/ Howard L. Simon

Howard L. Simon (hsimon@windelsmarx.com)
156 West 56th Street
New York, New York 10019
Telephone: (212) 237-1000
Facsimile: (212) 262-1215

Exhibit A

**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 (CGM)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

AFFIDAVIT OF HOWARD L. SIMON

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

HOWARD L. SIMON, being duly sworn, deposes and says:

1. I am an attorney admitted to the bar of this Court and a member of the firm of Windels Marx Lane & Mittendorf, LLP (“Windels Marx”). I submit this affidavit in support of the Forty-Fifth application (“Forty-Fifth Application”) of Windels Marx, as special counsel to Irving H. Picard as trustee (the “Trustee”) for the substantively consolidated liquidation proceeding of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and to Alan Nisselson (the “Chapter 7 Trustee”) as trustee for the chapter 7 estate of Bernard L. Madoff (“Madoff”), pursuant to the Orders of this Court dated July 16, 2009 [Docket No. 327] and November 23, 2011 [Docket No. 4547], for allowance of interim compensation for services performed and reimbursement of actual and necessary expenses incurred during the period commencing April 1,

2024 through and including July 31, 2024 (the “Compensation Period”), pursuant to section 78eee(b)(5) of the Securities Investor Protection Act (“SIPA”), 15 U.S.C. § 78eee(b)(5), sections 330 and 331 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), and Rule 2016(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

2. I submit this affidavit pursuant to Bankruptcy Rule 2016(a) in support of Windels Marx’s Application for allowance of compensation in the amount of \$6,581,028.00 for professional services rendered during the Compensation Period (of which 20%, or \$1,316,205.60 is to be deferred through the conclusion of the liquidation proceeding or further order of the Court) and reimbursement in the amount of \$19,103.05 for necessary expenses incurred during the Compensation Period.

3. As the supervising attorney in charge of the attorneys and paraprofessionals staffed on this matter, I am familiar with such services and with these proceedings. These statements are correct to the best of my knowledge and belief, based upon conversations I have conducted with attorneys at Windels Marx, the Trustee, and his counsel Baker & Hostetler, LLP, and upon records kept by Windels Marx in the normal course of business.

4. I hereby certify that (i) I have read the Forty-Fifth Application and (ii) to the best of my knowledge, information and belief, formed after reasonable inquiry, the Forty-Fifth Application substantially complies with the guidelines for fee applications under Bankruptcy Rule 2016(a).

5. Windels Marx’s fees in this case reflect a 10% public interest discount from Windels Marx’s standard rates. Windels Marx has also voluntarily written-off an additional \$62,338.33 in fees and \$112,784.40 in unbilled time. These discounts and write-offs have resulted in a voluntary reduction of \$906,348.06. Windels Marx’s fees are reasonable based on the customary compensation charged by comparably skilled practitioners in comparable

bankruptcy and non-bankruptcy cases in a competitive national legal market.

6. I hereby certify that members of SIPC's staff have been provided with a copy of this Forty-Fifth Application.

7. I hereby certify that members of SIPC's staff have been provided with monthly statements of fees and disbursements accrued during the Compensation Period.

8. I hereby certify that (i) in providing reimbursable nonlegal services to the estate, Windels Marx does not make a profit on such services; and (ii) in seeking reimbursement for a service which Windels Marx justifiably purchased or contracted from a third party, Windels Marx requests reimbursement only for the amount billed to Windels Marx by the third-party vendors and paid by Windels Marx to such vendors.

9. Windels Marx has not made any previous application for allowance of fees for professional services rendered during the Compensation Period.

10. There is no agreement or understanding between the Trustee, Windels Marx and any other person, other than members of Windels Marx, for sharing of compensation to be perceived for services rendered in this case.

11. No agreement or understanding prohibited by 18 U.S.C. §155 has been made or shall be made by Windels Marx.

/s/ Howard L. Simon
Howard L. Simon

Sworn to and subscribed before me
this 25th day of October 2024.

/s/ Maritza Segarra

Maritza Segarra

Notary Public, State of New York

No. 01SE4652865

Qualified in Westchester County

Commission Expires December 31, 2025

Exhibit B

SUMMARY OF FORTY-FIFTH INTERIM FEE APPLICATION OF WINDELS MARX
LANE & MITTENDORF, LLP FOR SERVICES RENDERED FROM APRIL 1, 2024
THROUGH JULY 31, 2024

Name	Year Admitted	Apr-Jul 2024 Standard Hourly Rate	Apr-Jul 2024 Total Hours Billed	Apr-Jul 2024 Total Compensation
Howard L. Simon	1977	790.00	556.10	\$ 439,319.00
Robert J. Luddy	1987	710.00	55.50	\$ 39,405.00
Kim M. Longo	2002	700.00	700.80	\$ 490,560.00
John J. Tepedino	2005	650.00	592.50	\$ 385,125.00
Total Partners			1,904.90	\$ 1,354,409.00
Margarita Y. Ginzburg	1999	595.00	704.00	\$ 418,880.00
Alan D. Lawn	2009	520.00	639.40	\$ 332,488.00
Brian W. Kreutter	2003	460.00	563.80	\$ 259,348.00
Total Special Counsel			1,907.20	\$ 1,010,716.00
Maja Lukic	2011	510.00	635.60	\$ 324,156.00
Christopher T. Wheatley	2009	485.00	603.40	\$ 292,649.00
Alex Jonatowski	2007	475.00	665.10	\$ 315,922.50
Antonio Guzman Dominguez	2021	420.00	563.50	\$ 236,670.00
Edmund B. Troya	2003	405.00	337.90	\$ 136,849.50
Juan Pablo Chavez Vasin	2023	405.00	626.10	\$ 253,570.50
Tyschelle R. Doucette	2006	320.00	705.80	\$ 225,856.00
Anika Wilson	2000	320.00	648.10	\$ 207,392.00
Jose A. Despian Jr.	2010	320.00	607.00	\$ 194,240.00
Ashanti M. Harvey	2006	320.00	722.00	\$ 231,040.00
Adeyemi O. Adediran	2010	320.00	696.00	\$ 222,720.00
Toi L. Clifton	2016	320.00	704.00	\$ 225,280.00
Tamara Millien	2006	320.00	773.40	\$ 247,488.00
Maria S.T. Wilson	1998	320.00	788.00	\$ 252,160.00
Nathaniel S. Brown	2010	320.00	703.80	\$ 225,216.00
Benjamin D. Gardner	2003	320.00	506.30	\$ 162,016.00
Jonathan Noah Lerner	2011	320.00	669.00	\$ 214,080.00
Romeo M. Peterson	2011	320.00	422.00	\$ 135,040.00
Total Associates			11,377.00	\$ 4,102,345.50
Carilyn Priolo		315.00	308.30	\$ 97,114.50
Matthew Corwin		270.00	60.90	\$ 16,443.00
Total Paraprofessionals			369.20	\$ 113,557.50
Partners			1,904.90	\$ 1,354,409.00
Special Counsel			1,907.20	\$ 1,010,716.00
Associates			11,377.00	\$ 4,102,345.50
Paraprofessionals			369.20	\$ 113,557.50
Blended Attorney Rate		425.80		
Blended Rate All Professionals		422.99		
GRAND TOTAL			15,558.30	\$ 6,581,028.00

Exhibit C

SUMMARY OF FORTY-FIFTH INTERIM FEE APPLICATION OF WINDELS
MARX LANE & MITTENDORF, LLP FOR EXPENSES INCURRED FROM
APRIL 1, 2024 THROUGH AND INCLUDING JULY 31, 2024

Code Description	Amount
Reproduction	\$ 36.00
Postage	\$ 0.64
Air Courier/Messenger	\$ 234.25
Online Research	\$ 18,173.92
Search Fees	\$ 4.00
Service Fees	\$ 654.24
TOTAL	\$ 19,103.05

Exhibit D

COMPENSATION BY MATTER AND TASK CODE FOR SERVICES RENDERED BY WINDELS MARX
LANE & MITTENDORF, LLP FOR THE FORTY-FIFTH INTERIM PERIOD OF
APRIL 1, 2024 THROUGH AND INCLUDING JULY 31, 2024

Matter Number	Matter Name	Task Code	Task Code Description	Hours	Amount
2	Attorneys for Trustee	004	Case Administration	3.90	\$ 1,182.00
		007	Fee Application	157.40	60,295.00
		020	Internal Office Meetings	183.00	87,908.00
		041	Discovery, Document Review, Document Production	3.20	1,925.00
12	Credit Suisse	010	Litigation	1,148.90	536,726.00
14	Zephyros	010	Litigation	80.80	39,536.00
15	Mistral	010	Litigation	25.60	13,222.00
16	Societe Generale	010	Litigation	947.70	420,855.00
17	Royal Bank of Canada	010	Litigation	1,237.10	598,227.50
18	Clariden Leu	010	Litigation	2,455.10	795,291.50
19	Trincastar Corp.	010	Litigation	529.60	286,320.00
20	Coordinated Cases	010	Litigation	1,455.30	833,455.00
23	Case-Wide Subsequent Transfer Litigation	010	Litigation	806.00	446,453.00
24	Naidot	010	Litigation	187.10	104,747.50
25	Legacy	010	Litigation	6,337.60	2,354,884.50
			TOTALS	15,558.30	\$ 6,581,028.00