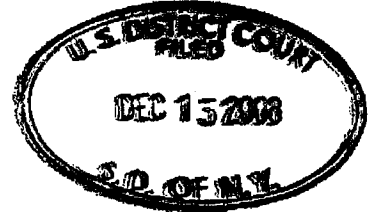


EXHIBIT 11

DOC # 5

SECURITIES INVESTOR PROTECTION CORPORATION
JOSEPHINE WANG (JW0674)
General Counsel
KEVIN H. BELL (KB2260)
Senior Associate General Counsel
805 Fifteenth Street, N.W., Suite 800
Washington, DC 20005-2207
Telephone: (202) 371-8300



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

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.)
)
BERNARD L. MADOFF, and)
BERNARD L. MADOFF INVESTMENT)
SECURITIES LLC,)
Defendants.)

Civ. 08-10791

SECURITIES INVESTOR PROTECTION CORPORATION,)
)
Applicant,)
)
v.)
)
BERNARD L. MADOFF INVESTMENT)
SECURITIES LLC,)
Defendant.)

**APPLICATION OF
THE SECURITIES INVESTOR PROTECTION CORPORATION**

Applicant Securities Investor Protection Corporation ("SIPC") applies to this Court for a decree adjudicating that the customers of the Defendant Bernard L. Madoff Investment Securities

LLC are in need of the protections afforded under the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. §78aaa et seq. ("SIPA"),¹ and respectfully alleges the following:

1. SIPC is a nonprofit membership corporation created under SIPA.
2. The Defendant is a broker-dealer registered with the United States Securities and Exchange Commission ("Commission"), a member of the Financial Industry Regulatory Authority ("FINRA"), and a member of SIPC. Under SIPA §78eee(a)(3), SIPC has jurisdiction over broker-dealers that are members of SIPC or were members within 180 days prior to SIPC's determination that an application for a customer protective decree should be filed. In the instant case, SIPC has determined that an application for a protective decree should be filed as to the Defendant.
3. The Defendant has its principal office and place of business at 885 Third Avenue, New York, NY 10022.
4. This proceeding arises under SIPA, more particularly §§78eee(a)(3) and (b)(2), which confers jurisdiction over this proceeding and exclusive jurisdiction over the Defendant and its property on this Court, and pursuant to which SIPC applies to this Court for a decree adjudicating that the customers of the Defendant are in need of the protection provided therein.
5. Upon sufficient information, including information supplied by the Commission and FINRA, SIPC has determined that the Defendant has failed to meet its obligations to its customers within the meaning of SIPA §78eee(a)(3), and that there exists one or more of the conditions specified in SIPA §78eee(b)(1). Specifically, (1) the Defendant is unable to meet its obligations to customers as they mature; (2) a receiver has been appointed by this Court for the Defendant's assets,

¹ References hereinafter to provisions of SIPA shall omit "15 U.S.C."

including, without limitation, the assets of Madoff International Ltd. and Madoff Ltd; (3) the Defendant is not in compliance with the requirements under sections 15(c)(3) and 17(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§78o(c)(3) and 78q(a), and Rules of the Commission with respect to financial and recordkeeping responsibilities, namely, Commission Rules 15c3-1, 15c3-3 and 17a-3, 17 C.F.R. §240.15c3-1, §240.15c3-3, and §240.17a-3; and (4) the Defendant is unable to make such computation as may be necessary to establish compliance with such financial responsibility rules.

6. Because of the above, the customers of the Defendant are in need of the protection provided by SIPA, and this Court should issue a protective decree pursuant to SIPA §78eee(b)(1).

7. SIPA §78eee(b)(3) provides that upon issuance of a protective decree the court shall forthwith appoint as trustee for the liquidation of the business of the and as attorney for the trustee, such persons as SIPC, in its sole discretion, specifies. Pursuant to that section, SIPC respectfully designates Irving H. Picard, Esquire, as trustee, and the law firm of Baker & Hostetler LLP as counsel to the trustee.

8. The filing of this Application operates, pursuant to 11 U.S.C. ("Bankruptcy Code") §362(a), as an automatic stay with respect to actions enumerated in that section. Notice of the applicability of the automatic stay should be part of the Order for relief.

9. SIPA §78eee(b)(2)(B)(i) provides that the Court "shall stay any pending bankruptcy, mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the debtor or its property and any other suit against any receiver, conservator, or trustee of the debtor or its property. . . ." Such actions are also stayed by operation of Bankruptcy Code §362(a).

10. Pursuant to SIPA §78eee(b)(2)(B)(ii), the Court is empowered to stay “any proceeding to enforce a lien against property of the debtor or any other suit against the debtor.” SIPA §78eee(b)(2)(B)(iii) provides that the Court may stay “enforcement of . . . but shall not abrogate any right of setoff, except to the extent such right may be affected under section 553 of title 11, and shall not abrogate the right to enforce a valid, non-preferential lien or pledge against the property of the debtor.” SIPA §78eee(b)(2)(C)(ii) provides that notwithstanding section 78eee(b)(2)(C)(i), the application by SIPC or any order or decree thereon “may operate as a stay of the foreclosure on, or disposition of, securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement, or securities lent under a securities lending agreement.”

11. The relief requested should be granted in order to safeguard and protect any property of the Defendant for the benefit of its customers and other creditors, and in the interest of an orderly liquidation of the Defendant’s business.

12. Pursuant to SIPA §78eee(b)(4), upon issuance of a protective decree, the Court shall order the removal of the entire liquidation proceeding to the court of the United States in this judicial district having jurisdiction over cases under the Bankruptcy Code, *i.e.*, the United States Bankruptcy Court for the Southern District of New York.

13. SIPC has made no previous application to any Court for the relief requested.

WHEREFORE, SIPC respectfully requests:

- I. That the Court enter an Order:
 - A. Adjudicating that the customers of the Defendant are in need of the protections afforded under SIPA;

- B. Appointing (i) Irving H. Picard as trustee for the liquidation of the business of the Defendant, with all the duties and powers of a trustee as prescribed in SIPA, and (ii) the law firm of Baker & Hostetler LLP as counsel to the trustee;
- C. Providing notice that, subject to the other provisions of Bankruptcy Code §362, the automatic stay provisions of Bankruptcy Code §362(a) operate as a stay of:
1. the commencement or continuation, including the issuance or employment of process, of a judicial, administrative or other proceeding against the Defendant that was or could have been commenced before the commencement of this proceeding, or to recover a claim against the Defendant that arose before the commencement of this proceeding;
 2. the enforcement against the Defendant or against property of the estate of a judgment obtained before the commencement of this proceeding;
 3. any act to obtain possession of property of the estate or property from the estate;
 4. any act to create, perfect or enforce any lien against property of the estate;
 5. any act to create, perfect or enforce against property of the Defendant any lien to the extent that such lien secures a claim that arose before the commencement of this proceeding;
 6. any act to collect, assess or recover a claim against the Defendant that arose before the commencement of this proceeding;

7. the setoff of any debt owing to the Defendant that arose before the commencement of this proceeding against any claim against the Defendant; and
8. the commencement or continuation of a proceeding before the United States Tax Court concerning the Defendant's tax liability for a taxable period the Bankruptcy Court may determine.

- D. Staying, enjoining and restraining, pursuant to the Court's exclusive jurisdiction over the Defendant and its property, wherever located, and Bankruptcy Code §105(a), all persons and entities from directly or indirectly removing, transferring, setting off, receiving, retaining, changing, selling, pledging, assigning or otherwise disposing of, withdrawing or interfering with any assets or property owned, controlled or in the possession of the Defendant, including but not limited to the books and records of the Defendant, and customers' securities and free credit balances, except for the purpose of effecting possession and control of said property by the trustee;
- E. Staying, enjoining and restraining, pursuant to SIPA §78eee(b)(2)(B)(i), any pending bankruptcy, mortgage foreclosure, equity receivership or other proceeding to reorganize, conserve or liquidate the Defendant or its property and any other suit against any receiver, conservator or trustee of the Defendant or its property;
- F. Providing that, pursuant to SIPA §§78eee(b)(2)(B)(ii) and (iii), and notwithstanding the provisions of Bankruptcy Code §§362 and 553, except as otherwise set forth in the Order, all persons and entities are stayed, enjoined and restrained, for a period of twenty-one (21) days after the date of entry of the Order or such other time as may

subsequently be ordered by this Court, or any other court having competent jurisdiction over this proceeding, from enforcing liens or pledges against the property of the Defendant and from exercising any right of setoff, without first receiving the written consent of SIPC;

G. Providing that, pursuant to SIPA §78eee(b)(2)(C)(ii), and notwithstanding SIPA §78eee(b)(2)(C)(i), all persons and entities are stayed for a period of twenty-one (21) days after the date of entry of the Order or such other time as may subsequently be ordered by this Court or any other court having competent jurisdiction of this proceeding, from foreclosing on, or disposing of, securities collateral pledged by the Defendant, whether or not with respect to one or more of such contracts or agreements, securities sold by the Defendant under a repurchase agreement, or securities lent under a securities lending agreement, without first receiving the written consent of SIPC;

H. Providing that nothing in the Order shall enjoin:

1. any suit, action or proceeding brought or to be brought by the Commission or any self-regulatory organization of which the Defendant is now a member or was a member within the past six months; or
2. the exercise of a contractual right of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in Bankruptcy Code §§101, 741, and 761, to offset or net termination values, payment amounts, or other transfer obligations

arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the defendant, whether or not with respect to one or more of such contracts or agreements;
or

3. the exercise of a contractual right of any securities clearing agency to cause the liquidation of a securities contract as defined in Bankruptcy Code §741(7); or
4. the exercise of a contractual right of any stockbroker or financial institution, as defined in Bankruptcy Code §101, to use cash or letters of credit held by it as collateral, to cause the liquidation of its contract for the loan of a security to the Defendant or for the pre-release of American Depository Receipts or the securities underlying such receipts; or
5. the exercise of a contractual right of any "repo" participant, as defined in Bankruptcy Code §101, to use cash to cause the liquidation, termination, or acceleration of a repurchase agreement, pursuant to which the Defendant is a purchaser of securities, whether or not such repurchase agreement meets the definition set forth in section 101(47) of the Bankruptcy Code, 11 U.S.C. §101(47); or
6. the exercise of a contractual right, as such term is used in 11 U.S.C. §555, in respect of (i) any extension of credit for the clearance or settlement of securities transactions or (ii) any margin loan, as each such term is used in 11 U.S.C. §741(7), by a securities clearing bank. As used herein, "securities


clearing bank” refers to any financial participant, as defined in 11 U.S.C. §101(22A), that extends credit for the clearance or settlement of securities transactions to one or more Primary Government Securities Dealers designated as such by the Federal Reserve Bank of New York from time to time; or

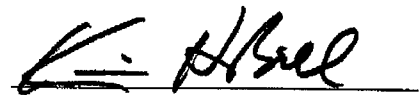
7. any setoff or liquidating transaction undertaken pursuant to the rules or bylaws of any securities clearing agency registered under section 17A(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78q-1(b), or by any person acting under instructions from and on behalf of such a securities clearing agency; or
8. any settlement transaction undertaken by such securities clearing agency using securities either (i) in its custody or control, or (ii) in the custody or control of another securities agency with which it has a Commission approved interface procedure for securities transactions settlements, provided that the entire proceeds thereof, without benefit of any offset, are promptly turned over to the trustee; or
9. any transfer or delivery to a securities clearing agency by a bank or other depository, pursuant to instructions given by such clearing agency, of cash, securities, or other property of the Defendant held by such bank or depository subject to the instructions of such clearing agency and constituting a margin payment as defined in Bankruptcy Code §741(5);

- I. Removing this liquidation proceeding to the United States Bankruptcy Court for this District, pursuant to SIPA §78eee(b)(4); and
 - J. Authorizing the trustee to take immediate possession of the property of the Defendant, wherever located, including but not limited to the books and records of the Defendant, and to open accounts and obtain a safe deposit box at a bank or banks to be chosen by the trustee, and to designate such of his representatives who shall be authorized to access such property.
- II. That the Court grant such other and further relief it may deem necessary and proper.

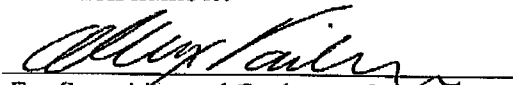
DATED: December 15, 2008

Respectfully submitted,


JOSEPHINE WANG (JW0674)
General Counsel


Kevin H. Bell (KB2260)
Senior Associate General Counsel
SECURITIES INVESTOR
PROTECTION CORPORATION
805 Fifteenth Street, N.W., Suite 800
Washington, DC 20005
Telephone: (202) 371-8300
Facsimile: (202) 371-6728
E-mail: jwang@sipc.org
E-mail: kbell@sipc.org

The Securities and Exchange Commission consents, pursuant to section 78eee(a)(4)(A) of SIPA, 15 U.S.C.A. §78eee(a)(4)(A) (1981), to the combination of this Application with the action brought by the Commission against the Defendant with the same civil action number.


For Securities and Exchange Commission

ORIGINAL

STANTON, F.

SECURITIES INVESTOR PROTECTION
CORPORATION
JOSEPHINE WANG (JW0674)
General Counsel
KEVIN H. BELL (KB2260)
Senior Associate General Counsel
805 Fifteenth Street, N.W., Suite 800
Washington, DC 20005-2207
Telephone: (202) 371-8300

**USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 12/15/08**

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

SECURITIES AND EXCHANGE COMMISSION,)

Plaintiff,)

v.)

Civ. 08-10791

BERNARD L. MADOFF, and)
BERNARD L. MADOFF INVESTMENT)
SECURITIES LLC,)

Defendants.)

SECURITIES INVESTOR PROTECTION)
CORPORATION,)

Applicant,)

v.)

BERNARD L. MADOFF INVESTMENT)
SECURITIES LLC,)

Defendant.)

ORDER

On the Complaint and Application of the Securities Investor Protection Corporation ("SIPC"), it is hereby:

I. ORDERED, ADJUDGED and DECREED that the customers of the Defendant,

Bernard L. Madoff Investment Securities LLC, are in need of the protection afforded by the Securities Investor Protection Act of 1970, as amended ("SIPA", 15 U.S.C. §78aaa *et seq.*).

II. ORDERED that pursuant to 15 U.S.C. §78eee(b)(3), Irving H. Picard, Esquire is appointed trustee for the liquidation of the business of the Defendant with all the duties and powers of a trustee as prescribed in SIPA, and the law firm of Baker & Hostetler LLP is appointed counsel for the trustee. The trustee shall file a fidelity bond satisfactory to the Court in the amount of

✓ \$250,000.00

LLS

III. ORDERED that all persons and entities are notified that, subject to the other provisions of 11 U.S.C. §362, the automatic stay provisions of 11 U.S.C. §362(a) operate as a stay of:

- A. the commencement or continuation, including the issuance or employment of process, of a judicial, administrative or other proceeding against the Defendant that was or could have been commenced before the commencement of this proceeding, or to recover a claim against the Defendant that arose before the commencement of this proceeding;
- B. the enforcement against the Defendant or against property of the estate of a judgment obtained before the commencement of this proceeding;
- C. any act to obtain possession of property of the estate or property from the estate;
- D. any act to create, perfect or enforce any lien against property of the estate;
- E. any act to create, perfect or enforce against property of the Defendant any lien to the extent that such lien secures a claim that arose before the commencement of this proceeding;
- F. any act to collect, assess or recover a claim against the Defendant that arose before the commencement of this proceeding;
- G. the setoff of any debt owing to the Defendant that arose before the commencement

of this proceeding against any claim against the Defendant; and

H. the commencement or continuation of a proceeding before the United States Tax Court concerning the Defendant's tax liability for a taxable period the Bankruptcy Court may determine.

IV. ORDERED that all persons and entities are stayed, enjoined and restrained from directly or indirectly removing, transferring, setting off, receiving, retaining, changing, selling, pledging, assigning or otherwise disposing of, withdrawing or interfering with any assets or property owned, controlled or in the possession of the Defendant, including but not limited to the books and records of the Defendant, and customers' securities and credit balances, except for the purpose of effecting possession and control of said property by the trustee.

V. ORDERED that pursuant to 15 U.S.C. §78eee(b)(2)(B)(i), any pending bankruptcy, mortgage foreclosure, equity receivership or other proceeding to reorganize, conserve or liquidate the Defendant or its property and any other suit against any receiver, conservator or trustee of the Defendant or its property, is stayed.

VI. ORDERED that pursuant to 15 U.S.C. §§78eee(b)(2)(B)(ii) and (iii), and notwithstanding the provisions of 11 U.S.C. §§362(b) and 553, except as otherwise provided in this Order, all persons and entities are stayed, enjoined and restrained for a period of twenty-one (21) days, or such other time as may subsequently be ordered by this Court or any other court having competent jurisdiction of this proceeding, from enforcing liens or pledges against the property of the Defendant and from exercising any right of setoff, without first receiving the written consent of SIPC and the trustee.

VII. ORDERED that, pursuant to 15 U.S.C. §78eee(b)(2)(C)(ii), and notwithstanding 15 U.S.C. §78eee(b)(2)(C)(i), all persons and entities are stayed for a period of twenty-one (21) days,

or such other time as may subsequently be ordered by this Court or any other court having competent jurisdiction of this proceeding, from foreclosing on, or disposing of, securities collateral pledged by the Defendant, whether or not with respect to one or more of such contracts or agreements, securities sold by the Defendant under a repurchase agreement, or securities lent under a securities lending agreement, without first receiving the written consent of SIPC and the trustee.

VIII. ORDERED that the stays set forth above shall not apply to:

A. any suit, action or proceeding brought or to be brought by the United States Securities and Exchange Commission ("Commission") or any self-regulatory organization of which the Defendant is now a member or was a member within the past six months; or

B. the exercise of a contractual right of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in 11 U.S.C. §§101, 741, and 761, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the Defendant, whether or not with respect to one or more of such contracts or agreements; or

C. the exercise of a contractual right of any securities clearing agency to cause the liquidation of a securities contract as defined in 11 U.S.C. §741(7); or

D. the exercise of a contractual right of any stockbroker or financial institution, as defined in 11 U.S.C. §101, to use cash or letters of credit held by it as collateral, to cause the liquidation of its contract for the loan of a security to the Defendant or

for the pre-release of American Depository Receipts or the securities underlying such receipts; or

E. the exercise of a contractual right of any "repo" participant, as defined in 11 U.S.C. §101, to use cash to cause the liquidation of a repurchase agreement, pursuant to which the Defendant is a purchaser of securities, whether or not such repurchase agreement meets the definition set forth in 11 U.S.C. §101(47); or

F. the exercise of a contractual right, as such term is used in 11 U.S.C. §555, in respect of (i) any extension of credit for the clearance or settlement of securities transactions or (ii) any margin loan, as each such term is used in 11 U.S.C. §741(7), by a securities clearing bank. As used herein, "securities clearing bank" refers to any financial participant, as defined in 11 U.S.C. §101(22A), that extends credit for the clearance or settlement of securities transactions to one or more Primary Government Securities Dealers designated as such by the Federal Reserve Bank of New York from time to time; or

G. any setoff or liquidating transaction undertaken pursuant to the rules or bylaws of any securities clearing agency registered under section 17A(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78q-1(b), or by any person acting under instructions from and on behalf of such a securities clearing agency; or

H. any settlement transaction undertaken by such securities clearing agency using securities either (i) in its custody or control, or (ii) in the custody or control of another securities agency with which it has a Commission approved interface procedure for securities transactions settlements, provided that the entire proceeds thereof, without benefit of any offset, are promptly turned over to the trustee; or

I. any transfer or delivery to a securities clearing agency by a bank or other depository, pursuant to instructions given by such clearing agency, of cash, securities, or other property of the Defendant held by such bank or depository subject to the instructions of such clearing agency and constituting a margin payment as defined in 11 U.S.C. §741(5).

IX. ORDERED that pursuant to 15 U.S.C. §78eee(b)(4), this liquidation proceeding is removed to the United States Bankruptcy Court for the Southern District of New York.

X. ORDERED that the trustee is authorized to take immediate possession of the property of the Defendant, wherever located, including but not limited to the books and records of the Defendant, and to open accounts and obtain a safe deposit box at a bank or banks to be chosen by the trustee, and the trustee may designate such of his representatives who shall be authorized to have access to such property.

Date: December 15, 2008

4:08 PM

Louis L. Stanton
UNITED STATES DISTRICT JUDGE

**UNITED STATES BANKRUPTCY COURT
FOR THE 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

ORDER EXTENDING THE STAYS AGAINST ALL CREDITORS

Upon the ex-parte application (the "Application"),¹ dated January 5, 2009, of Irving H. Picard (the "Trustee"), as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC (the "Debtor"), for the entry of an order extending the stays provided in the order (the "Protective Decree"), entered on December 15, 2008 by the Honorable Louis Stanton, United States District Judge, United States District Court, Southern District of New York (No. 08-CV-10791), against all creditors of the Debtor; and the Court having jurisdiction to consider the Application and the relief requested therein in accordance with 28 U.S.C. § 1334; and consideration of the Application and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found and determined that the relief sought in the Application is in the best interests of the Debtor, its estate, customers and creditors, and all parties in interest and that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and the Court having determined that notice of the

¹ Terms not defined herein shall have the meaning ascribed to them in the Application.

Application was sufficient and no further notice thereof is required; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Application is granted; and it is further

ORDERED that 11 U.S.C. § 362 (the automatic stay) is effective in this case from and after the December 11, 2008 filing date; and it is further

ORDERED that the stays against all creditors of the Debtor and all other persons as provided for in paragraphs VI and VII of the Protective Decree be and the same hereby is extended from and after January 5, 2009 until further order of this Court; and it is further

ORDERED that the Trustee shall serve a copy of this Order upon all known customers and creditors of the Debtor on the date this Order is entered, or as soon thereafter as is practicable; and it is further

ORDERED that affected parties may move before this Court to be relieved from said stays pursuant to the Bankruptcy Code on written notice to (a) the Trustee, through his attorneys, Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, NY 10111, attention: Douglas Spelfogel and Richard Bernard, and (b) Securities Investor Protection Corporation, 805 Fifteenth Street, N.W., Suite 800, Washington, DC 20005, attention: Kevin H. Bell.

Dated: January 5, 2009 @ 4:15pm
New York, New York

/s/Burton R. Lifland
BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE



**CUSTOMER CLAIM FORM
LEHMAN BROTHERS INC.**

Account Name: _____ Daytime Phone: _____
Account Number: _____ Email: _____
Address: _____
_____ Taxpayer I.D. Number
Contact Person: _____ (Social Security No.): _____

PLEASE NOTE

- **A SEPARATE CLAIM FORM SHOULD BE FILED FOR EACH ACCOUNT.**
- **TO BE ELIGIBLE FOR THE MAXIMUM PROTECTION AFFORDED UNDER THE SECURITIES INVESTOR PROTECTION ACT (“SIPA”), ALL CUSTOMER CLAIMS SHOULD BE RECEIVED BY THE TRUSTEE ON OR BEFORE JANUARY 30, 2009; THE TRUSTEE WILL DETERMINE WHETHER CLAIMS MEET THE STATUTORY REQUIREMENTS FOR “CUSTOMER” CLAIMS UNDER SIPA; INCLUSION OF A CLAIM OR CLAIM TYPE ON THIS CLAIM FORM IS NOT DETERMINATIVE OF CUSTOMER STATUS UNDER SIPA.**
- **THE DEADLINE FOR FILING ALL CLAIMS IS JUNE 1, 2009. NO CLAIM WILL BE ALLOWED IF IT IS RECEIVED AFTER THAT DATE.**
- **ALL CLAIMS ARE DATED AS OF THE DATE RECEIVED BY THE TRUSTEE.**
- **YOU MAY FILE YOUR CLAIM ELECTRONICALLY ONLINE AT WWW.LEHMANTRUSTEE.COM OR SEND YOUR COMPLETED AND SIGNED CLAIM FORM TO THE TRUSTEE VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED.**
- **IF YOUR ACCOUNT HAS BEEN TRANSFERRED TO ANOTHER BROKERAGE FIRM, BUT YOU BELIEVE YOU HAVE A CLAIM FOR PROPERTY OWED TO YOU BY LEHMAN BROTHERS INC., YOU MUST FILE A CLAIM TO PROTECT YOUR RIGHTS.**
- **LEHMAN BROTHERS INC. IS THE ONLY LEHMAN ENTITY THAT IS A DEBTOR IN THIS SIPA LIQUIDATION PROCEEDING. THIS CUSTOMER CLAIM FORM APPLIES ONLY TO LEHMAN BROTHERS INC. AND DOES NOT APPLY TO ANY OTHER LEHMAN ENTITY, INCLUDING ANY ENTITY IN A PROCEEDING UNDER CHAPTER 11 OF TITLE 11 OF THE UNITED STATES CODE.**

This claim form must be completed electronically online at www.lehmantrustee.com or mailed promptly, together with supporting documentation, to the following:

If by first class mail:

Lehman Brothers Inc. Claims Processing
c/o Epiq Bankruptcy Solutions, LLC
P.O. Box 6389
Portland, OR 97228-6389

If by overnight mail:

Lehman Brothers Inc. Claims Processing
c/o Epiq Bankruptcy Solutions, LLC
10300 SW Allen Blvd
Beaverton, OR 97005

1. CLAIM FOR MONEY BALANCES OR CASH AS OF SEPTEMBER 19, 2008:

- a. LBI owes me a credit or cash in the amount of: \$ _____
- b. I owe LBI a debit or cash in the amount of: \$ _____
- c. If you wish to repay the debit balance listed in point b. above please insert the amount you wish to repay and attach a check payable to "James W. Giddens, Trustee for the SIPA Liquidation of Lehman Brothers Inc." If you wish to make a payment, **it must be enclosed** with this claim form. \$ _____

2. CLAIM FOR SECURITIES AS OF SEPTEMBER 19, 2008:

Please Do Not Claim Any Securities You Have In Your Possession

- | | <u>YES</u> | <u>NO</u> |
|---|-----------------|-----------|
| | (Circle Y or N) | |
| a. LBI owes me securities: | Y | N |
| b. I owe LBI securities: | Y | N |
| c. If yes to either, please list below (or in additional pages as necessary): | | |

Trade Date of Transaction (mm/dd/yyyy)	Name of Security	CUSIP	<u>Number of Shares or Face Amount of Bonds</u>	
			LBI Owes Me (Long)	I Owe LBI (Short)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

If additional space is needed, attach additional pages providing the information in the exact format above.

3. COMMODITY FUTURES CLAIMS

YES NO
 (Circle Y or N)

Do you have a claim based on a commodity futures account? Y N

If the answer to the above question is "yes," please state the amount, and explain the basis for your claim below, attaching additional pages and supporting documents as necessary:

Amount of Claim: _____

Basis for Claim: _____

WHEN COMPLETING SECTIONS 1 THROUGH 3 PLEASE KEEP IN MIND:

- If you cannot compute the amount of your claim, you may file an estimated claim. In that case, please indicate that your claim is an estimated claim.
- Proper documentation can speed the review, allowance, and satisfaction of your claim.
- Please enclose: copies of your last LBI account statement; purchase or sale confirmation slips; copies of checks that relate to the securities or cash you claim; and any other documentation or correspondence you believe will be of assistance in processing your claim.
- 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 CIRCLE THE APPROPRIATE ANSWER FOR ITEMS 4 THROUGH 11.

NOTE: IF "Y" IS CIRCLED FOR 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.

YES NO
 (Circle Y or N)

- | | | |
|---|---|---|
| 4. Does your claim in any way relate to an entity other than Lehman Brothers Inc. (for example, Lehman Brothers Holdings Inc., or another Lehman subsidiary)? | Y | N |
| 5. Has there been any change in your account since September 19, 2008? | Y | N |

- | | | | |
|-----|---|---|---|
| 6. | Are you or were you a party to a repurchase or reverse repurchase agreement, director, officer, partner, shareholder, lender to, or capital contributor of LBI? | Y | N |
| 7. | Are you related to, or do you have any business venture with, any of the persons specified in "6" above, or any employee or other person associated in any way with LBI? If so, give name(s). | Y | N |
| 8. | 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 LBI? | Y | N |
| 9. | Is this claim being filed on behalf of a customer of a broker or dealer or bank? If so, provide documentation with respect to each customer on whose behalf you are claiming. | Y | N |
| 10. | Have you ever given any discretionary authority to any person to execute securities transactions with or through LBI on your behalf? Give names, addresses and phone numbers. | Y | N |
| 11. | 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. | Y | N |

Please list the full name, address, phone number, and email address of anyone assisting you in the preparation of this claim form:

Full name: _____

Address: _____

Phone number: _____

Email address: _____

If more than one person is assisting you, attach additional pages providing the information in the exact format above.

IT IS A VIOLATION OF FEDERAL LAW TO FILE A FRAUDULENT CLAIM. CONVICTION CAN RESULT IN A FINE OF UP TO \$50,000 OR IMPRISONMENT OF UP TO FIVE YEARS OR BOTH.

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

Date _____ Signature _____

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.)

**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. 08-1789 (BRL)

SIPA Liquidation

Chapter 7

No. 09-11893 (BRL)

**CONSENT ORDER SUBSTANTIVELY CONSOLIDATING THE ESTATE
OF BERNARD L. MADOFF INTO THE SIPA PROCEEDING
OF BERNARD L. MADOFF INVESTMENT SECURITIES LLC AND EXPRESSLY
PRESERVING ALL RIGHTS, CLAIMS AND POWERS OF BOTH ESTATES**

THIS MATTER having been presented to the Court upon the joint motion (“Motion”) of the Securities Investor Protection Corporation (“SIPC”) and Irving H. Picard (“SIPA Trustee”), as Trustee for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”), under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et seq.* (“SIPA”), for entry of an order pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), section 78fff(b) of SIPA and Rule 1015 of the Federal Rules of Bankruptcy Procedure, substantively consolidating the Chapter 7 estate of Bernard L. Madoff (“Madoff”) into the estate of BLMIS; and Alan Nisselson, the Chapter 7 Trustee for the Madoff estate (the “Chapter 7 Trustee” or “Nisselson”) having submitted a response to the Motion (the “Response”) and the Court having considered the Motion and other pleadings filed by the SIPA Trustee, the Response and the arguments of counsel at a hearing on the Motion held on June 9, 2009; and after due deliberation and consideration of the facts and circumstances herein; and upon the record set

forth in open Court and all prior proceedings in the above-captioned BLMIS SIPA Proceeding (as defined below) and the above-captioned Madoff Chapter 7 Case (as defined below), all of which are incorporated by reference herein; and it appearing that the relief requested is warranted and is in the best interests of the estate of BLMIS and the Chapter 7 estate of Madoff, the Court makes the following findings and conclusions:

A. Notice of the Motion and the hearing thereon was given to (a) the Securities and Exchange Commission (“SEC”), (b) via the ECF filing, all parties in interest who have filed a notice of appearance or request to receive notices and pleadings in the BLMIS liquidation proceeding, (c) Madoff, through his counsel, (d) the Chapter 7 trustee for the estate of Madoff, (e) via the ECF filing, all parties in interest who have filed a notice of appearance or request to receive notices and pleadings in the Madoff Chapter 7 Case, and (f) the known creditors of Madoff, including the Petitioning Creditors (as defined below), and such notice is adequate and sufficient under the circumstances, and no further notice of the relief requested in the Motion or the relief granted hereunder need be given.

B. On December 11, 2008 (the “Filing Date”), the SEC filed a complaint in the United States District Court for the Southern District of New York (the “District Court”) against defendants Bernard L. Madoff and BLMIS (together, the “Defendants”) (Case No. 08 CV 10791). The complaint alleged that the Defendants engaged in fraud through investment advisor activities of BLMIS.

C. On December 15, 2008, pursuant to section 78eee(a)(4)(A) of SIPA, the SEC consented to a combination of its own action with an application of SIPC. Thereafter, pursuant to section 78eee(a)(3) of 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. Also on that date, the Trustee was appointed and the proceeding (the “BLMIS SIPA Proceeding”) was removed to this Court.

D. On April 10, 2009, the District Court entered an order modifying article V of the Order on Consent Imposing Preliminary Injunction, Freezing Assets and Granting Other Relief Against Defendants dated December 18, 2008, to allow the Petitioning Creditors to file an involuntary bankruptcy petition against Madoff (the “Petition”). The District Court in its Order noted that:

A Bankruptcy Trustee has direct rights to Mr. Madoff’s individual property, with the ability to maximize the size of the estate available to Mr. Madoff’s creditors through his statutory authority to locate assets, avoid fraudulent transfers, and preserve or increase the value of assets through investment or sale, as well as provide notice to creditors, process claims, and make distributions in a transparent manner under the procedures and preferences established by Congress, all under the supervision of the Bankruptcy Court.

E. 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”), filed an involuntary petition for relief against Madoff commencing a case under chapter 7 of the Bankruptcy Code (the “Madoff Chapter 7 Case”);

F. On April 21, 2009, pursuant to an Order of the Court dated April 20, 2009 directing the appointment of an interim chapter 7 trustee, the United States Trustee’s Office for the Southern District of New York appointed Nisselson as interim trustee for the Madoff Chapter 7 Case;

G. On May 7, 2009, the Court entered an Order for Relief in the Madoff Chapter 7 Case;

H. In order for the Chapter 7 Trustee to reach his own determination regarding the potential benefits of substantive consolidation, and whether there would be any potential harm to the creditors of the Madoff estate, the Chapter 7 Trustee and his counsel have met and conferred with: the SIPA Trustee and his counsel; Michael Slattery, Jr., Managing Director with FTI Consulting, Inc (“FTI”), one of the SIPA Trustee’s consultants; and Meaghan Schmidt of Alix Partners, LLP, consultants to the SIPA Trustee.

I. After having had an opportunity to meet with the foregoing, and having reviewed certain documentation regarding BLMIS and Madoff’s financial affairs, the Chapter 7 Trustee has concluded that there appears to be no basis to dispute the allegations made in the Motion papers concerning the history of payments and transfers from BLMIS to Madoff, Madoff’s misuse of BLMIS funds, the intertwining of, and lack of a practical manner in which to separate, the financial affairs of Madoff and BLMIS.

J. The Chapter 7 Trustee has concluded that, as set forth more fully in the Response, proceeding under a substantively consolidated estate in the manner as outlined in this Order is the most expeditious, efficient and economical manner to administer the estates and will benefit the creditors of both estates.

K. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and Section 78eee(b)(4) of SIPA. Venue in this district of the case and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This Motion is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (E) and (O).

L. Substantive consolidation of the Chapter 7 estate of Madoff into the estate of BLMIS as set forth herein is appropriate based upon the unity of interest between Madoff and BLMIS, the transfer and commingling of assets and the intertwined financial affairs generally between the two entities, as more fully set forth in the Affidavit of Michael Slattery, Jr. dated as of

May 5, 2009 (the "Affidavit"), and the supporting Memorandum of Law filed simultaneously therewith.

M. The Court having found that: (i) the affairs of Madoff and BLMIS are so entangled that they cannot practically be separated; (ii) that the benefits of consolidation outweigh any potential harm to creditors; and (iii) that the substantive consolidation as delineated in this Order will ensure the equitable treatment of all creditors of both estates.

NOW, THEREFORE, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. The Motion is granted as set forth herein.
2. All objections filed to the Motion are overruled in their entirety and on the merits.
3. Pursuant to section §105(a) of the Bankruptcy Code, the Madoff estate is substantively consolidated into the BLMIS SIPA Proceeding and the BLMIS estate, and all assets and liabilities of the Madoff estate shall be deemed consolidated into the BLMIS SIPA Proceeding and the BLMIS estate, which shall be administered in accordance with SIPA and the Bankruptcy Code under the jurisdiction of this Court.
4. Notwithstanding the substantive consolidation of the Madoff estate into the BLMIS SIPA Proceeding, the Chapter 7 Trustee shall remain Chapter 7 trustee of the Madoff estate and shall continue to have all powers, rights, claims and interests of a Chapter 7 trustee to bring claims under Chapters 5 and 7 of the Bankruptcy Code in consultation with the SIPA Trustee and SIPC. Further, all powers, rights, claims and interests of the Madoff estate are expressly preserved, including without limitation all Chapter 5 and Chapter 7 powers, rights, claims and/or interests.
5. Pursuant to Rule 1015(c) of the Federal Rules of Bankruptcy Procedure, and in order to avoid unnecessary costs and delays, (a) the Chapter 7 Trustee shall not retain separate counsel but instead will be authorized to use as his counsel, only after consultation with and approval by the SIPA Trustee and SIPC, counsel or special counsel retained by the SIPA Trustee;

(b) the Chapter 7 Trustee, acting in his capacity as such, will not seek or be entitled to compensation whether pursuant to section 326 of the Bankruptcy Code or otherwise, but shall be entitled to compensation for all of his services as legal counsel; and (c) the Chapter 7 Trustee shall consult with the SIPA Trustee with respect to his duties under section 704 of the Bankruptcy Code or otherwise and to the extent that the Chapter 7 Trustee reasonably determines that his exercise of any of the duties set forth in section 704 or otherwise would be duplicative of the efforts of the SIPA Trustee, the Chapter 7 Trustee shall not exercise such duties and is hereby relieved of the obligation to do so.

6. The SIPA Trustee shall continue to have the duties and powers of the SIPA Trustee and, in addition, he shall have all duties and powers of a Chapter 7 trustee for the Madoff estate other than those set forth in paragraph 4 hereof.

7. All powers, rights, claims and interests of the SIPA Trustee and the BLMIS estate are expressly preserved, including without limitation all Chapter 5 and Chapter 7 powers, rights, claims and/or interests, and the SIPA Trustee is authorized to pursue claims on behalf of the consolidated estate as the representative of and fiduciary for the BLMIS SIPA Proceeding and as subrogee and assignee of creditors' claims for, among other things, the avoidance and recovery of transferred property.

8. The entry of this Order or any subsequent order closing the Madoff Chapter 7 Case shall not operate, or be deemed, to discharge Madoff under Section 727 of the Bankruptcy Code, and the Chapter 7 Trustee and the SIPA Trustee each reserve all rights and powers to oppose or object to any such discharge.

9. All future documents shall be docketed in the substantively consolidated proceeding, case number 08-01789 (BRL).

10. The caption of the substantively consolidated estates shall be, and all docket entries

shall read as follows:

-----X
SECURITIES INVESTOR PROTECTION
CORPORATION,

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

Plaintiff-Applicant,

SIPA Liquidation

v.

(Substantively Consolidated)

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

-----X
In re:

BERNARD L. MADOFF,
Debtor.

-----X

11. The SIPA Trustee and the Chapter 7 Trustee, as the case may be, are authorized, without further order of this Court, to take such actions and sign such documents as may be necessary to implement and effectuate this Order.

12. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

13. The Clerk of the Court is hereby directed to enter this Order on the dockets of the BLMIS SIPA Proceeding (Adv. Pro. No. 08-1789 (BRL)) and the Madoff Chapter 7 Case (Case No. 09-11893 (BRL)).

14. The relief granted pursuant to this Order and the consolidation provided for herein shall be *nunc pro tunc* for all purposes to December 11, 2008.

Dated: New York, New York
June __, 2009

Irving H. Picard, Esq., Trustee for the SIPA
Liquidation of Bernard L. Madoff Investment
Securities LLC

Alan Nisselson, Esq., Interim Chapter 7
Trustee of Bernard L. Madoff

By: /s/Marc Hirschfield
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201

By: /s/ Alan Nisselson
Windels Marx Lane & Mittendorf, LLP
156 W. 56th Street
New York, New York 10019
Telephone: (212) 237-1000
Facsimile: (212) 262-1215

Securities Investor Protection Corporation

By: /s/Kevin Bell
805 Fifteenth Street N.W., Suite 800
Washington D.C. 20005
Telephone: (202) 371-8300
Facsimile: (202) 371-6728

DATED: June 9, 2009
New York, New York

SO ORDERED:

/s/Burton R. Lifland
HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE

10-2378-bk(L)
In re: Bernard L. Madoff Inv. Sec. LLC

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2010

(Argued: March 3, 2011 Decided: August 16, 2011)

Docket Nos. 10-2378-bk(L); 10-2676-bk(con); 10-2677-bk(con);
10-2679-bk(con); 10-2684-bk(con); 10-2685-bk(con); 10-2687-
bk(con); 10-2691-bk(con); 10-2693-bk(con); 10-2694-bk(con);
10-2718-bk(con); 10-2737-bk(con); 10-3188-bk(con); 10-3579-
bk(con); 10-3675-bk(con)

-----x

IN RE: BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Debtor.*

-----x

Before: JACOBS, Chief Judge, LEVAL and RAGGI,
Circuit Judges.

Former investors with Bernard L. Madoff appeal from an
order entered by the United States Bankruptcy Court for the
Southern District of New York (Lifland, J.) in the
liquidation proceedings of Bernard L. Madoff Investment
Securities LLC under the Securities Investor Protection Act.
The Trustee, Irving H. Picard, concluded that the investors'
"net equity," which determines how customer property will be

* Consolidated docket number 10-2737-bk was dismissed
with prejudice by stipulation of the parties on December 10,
2010. Fed. R. App. P. 42(b).

1 distributed in the wake of Madoff's fraud, should be
2 calculated based on the Net Investment Method. The
3 bankruptcy court affirmed the decision of the Trustee and
4 certified its decision for immediate appeal to this Court.
5 28 U.S.C. § 158(d)(2). This Court accepted the direct
6 appeal from the bankruptcy court, and for the following
7 reasons, we hold that the Trustee's determination as to how
8 to calculate "net equity" under the Securities Investor
9 Protection Act is legally sound in light of the
10 circumstances of this case and the relevant statutory
11 language. Accordingly, we affirm the order of the
12 bankruptcy court.

13 HELEN DAVIS CHAITMAN, Becker & Poliakoff,
14 LLP, New York, New York (Peter Schuyler,
15 *on the brief*), for Appellants Diane and
16 Roger Peskin, et al.
17

18 KAREN E. WAGNER, Davis Polk & Wardwell
19 LLP, New York, New York (Brian S.
20 Weinstein, Jonathan D. Martin, *on the*
21 *brief*), for Appellants Sterling Equities
22 Associates, Arthur Friedman, David Katz,
23 Gregory Katz, Michael Katz, Saul Katz, L.
24 Thomas Osterman, Marvin Tepper, Fred
25 Wilpon, Jeff Wilpon, Richard Wilpon, Mets
26 Limited Partnership.
27

28 BARRY R. LAX, Lax & Neville, New York,
29 New York (Brian Neville, Brian Maddox, *on*
30 *the brief*), for Appellants Mary Albanese,
31 et al.
32

1 Seth C. Farber, Kelly A. Librera, Dewey &
2 LeBoeuf LLP, New York, New York, for
3 Appellant Ellen G. Victor.
4

5 Stephen Fishbein, Richard F. Schwed,
6 Shearman & Sterling LLP, New York, New
7 York, for Appellants Carl J. Shapiro, et
8 al.
9

10 Carole Neville, Sonnenschein Nath &
11 Rosenthal LLP, New York, New York, for
12 Appellants Marsha Peshkin IRA, Michael
13 and Meryl Mann, Barry Weisfeld.
14

15 Matthew Gluck, Jonathan M. Landers, Brad
16 N. Friedman, Jennifer L. Young, Milberg
17 LLP, New York, New York, Stephen A.
18 Weiss, Christopher M. Van de Kieft,
19 Parvin K. Aminolroaya, Seeger Weiss LLP,
20 New York, New York, for Appellants The
21 Aspen Company, et al.
22

23 David B. Bernfeld, Jeffrey L. Bernfeld,
24 Bernfeld, DeMatteo & Bernfeld, LLP, New
25 York, New York, for Appellants Michael
26 Schur and Edith A. Schur.
27

28 David Parker, Matthew J. Gold, Jason
29 Otto, Kleinberg, Kaplan, Wolff & Cohen,
30 P.C., New York, New York, for Appellants
31 Lawrence Elins, Malibu Trading and
32 Investing, L.P.
33

34 Stanley Dale Cohen, New York, New York,
35 for Appellants Lee Mellis, Jean
36 Pomerantz, Bonnie Savitt.
37

38 Jeffrey A. Mitchell, Gibbons, P.C., New
39 York, New York, for Appellant Donald G.
40 Rynne.
41

42 Daniel M. Glosband, Goodwin Procter LLP,
43 Boston, Massachusetts (Larkin M. Morton,
44 Goodwin Procter LLP, New York, New York,
45 *on the brief*) for Appellants Jeffrey A.
46 Berman, et al.

1 Chryssa V. Valletta, Phillips Nizer LLP,
2 New York, New York for Appellants Herbert
3 Barbanel, Alice Barbanel.

4
5 Lawrence R. Velvel, *pro se*, Andover,
6 Massachusetts, for Appellant Lawrence R.
7 Velvel.

8
9 JOSEPHINE WANG, General Counsel,
10 Securities Investor Protection
11 Corporation, Washington, District of
12 Columbia (Kevin H. Bell, Senior Associate
13 General Counsel for Dispute Resolution,
14 Christopher H. Larosa, Associate General
15 Counsel, Lauren Attard, Staff Attorney,
16 *on the brief*), for Appellee Securities
17 Investor Protection Corporation.

18
19 DAVID J. SHEEHAN, Baker Hostetler LLP,
20 New York, New York (Thomas D. Warren,
21 Wendy J. Gibson, Seanna R. Brown, *on the*
22 *brief*), for Appellee Irving H. Picard, as
23 Trustee for the Substantively
24 Consolidated Securities Investor
25 Protection Act Liquidation of Bernard L.
26 Madoff Investment Securities LLC and
27 Bernard L. Madoff.

28
29 MICHAEL A. CONLEY, Deputy Solicitor for
30 Securities & Exchange Commission,
31 Washington, District of Columbia (David
32 M. Becker, General Counsel, Mark D. Cahn,
33 Deputy General Counsel, Jacob H.
34 Stillman, Solicitor, Katharine B.
35 Gresham, Assistant General Counsel, *on*
36 *the brief*), for Amicus Curiae Securities
37 & Exchange Commission.

38
39 DENNIS JACOBS, Chief Judge:

40
41 In the aftermath of a colossal Ponzi scheme conducted
42 by Bernard Madoff over a period of years, Irving H. Picard
43 has been appointed, pursuant to the Securities Investor

1 Protection Act, 15 U.S.C. § 78aaa et seq. ("SIPA"), as
2 Trustee for the liquidation of Bernard L. Madoff Investment
3 Securities LLC, id. § 78eee(b)(3). Pursuant to SIPA, Mr.
4 Picard has the general powers of a bankruptcy trustee, as
5 well as additional duties, specified by the Act, related to
6 recovering and distributing customer property. Id. § 78fff-
7 1. Essentially, Mr. Picard has been charged with sorting
8 out decades of fraud. The question presented by this appeal
9 is whether the method Mr. Picard selected for carrying out
10 his responsibilities under SIPA is legally sound under the
11 language of the statute. We hold that it is. Accordingly,
12 we affirm the order of the United States Bankruptcy Court
13 for the Southern District of New York (Lifland, J.).

14 **BACKGROUND**

15 The facts surrounding Bernard Madoff's multibillion
16 dollar Ponzi scheme are widely known and were recounted in
17 detail by the bankruptcy court. In re Bernard L. Madoff
18 Inv. Sec. LLC, 424 B.R. 122, 125-32 (Bankr. S.D.N.Y. 2010);
19 see also, e.g., In re Beacon Assocs. Litig., 745 F. Supp. 2d
20 386, 393-94 (S.D.N.Y. 2010); Anwar v. Fairfield Greenwich
21 Ltd., 728 F. Supp. 2d 372, 387, 389-90 (S.D.N.Y. 2010); In
22 re Tremont Sec. Law, State Law & Ins. Litig., 703 F. Supp.
23 2d 363, 367-68 (S.D.N.Y. 2010). For our purposes, a few

1 facts suffice. When customers invested with Bernard L.
2 Madoff Investment Securities LLC ("BLMIS"), they
3 relinquished all investment authority to Madoff. Madoff
4 collected funds from investors, claiming to invest those
5 funds pursuant to what he styled as a "split-strike
6 conversion strategy" for producing consistently high rates
7 of return on investments.² J.A. Vol. II at 292. The split-
8 strike conversion strategy supposedly involved buying a
9 basket of stocks listed on the Standard & Poor's 100 Index
10 and hedging through the use of options. However, Madoff
11 never invested those customer funds. Instead, Madoff
12 generated fictitious paper account statements and trading
13 records in order to conceal the fact that he engaged in no
14 trading activity whatsoever. Even though a customer's
15 monthly account statement listed securities transactions
16 purportedly executed during the reporting period and
17 purported individual holdings in various Standard & Poor's
18 100 Index stocks as of the end of the reporting period, the

² A select group of Madoff's family members, close friends, and employees held "non-split strike" accounts. Madoff provided these customers with invented account statements that reflected even greater investor success than the unwavering returns purportedly earned for his split-strike customers. In re Bernard L. Madoff, 424 B.R. at 130-31. The non-split strike customers are not parties to this appeal.

1 statement did not reflect any actual trading or holdings of
2 securities by Madoff on behalf of the customer. "In fact,
3 the Trustee's investigation revealed many occurrences where
4 purported trades were outside the exchange's price range for
5 the trade date." In re Bernard L. Madoff, 424 B.R. at 130.
6 Other now revealed irregularities make it clear that "Madoff
7 never executed his split-strike investment and hedging
8 strategies, and could not possibly have done so." Id. To
9 point out just two examples, "an unrealistic number of
10 option trades would have been necessary to implement the . .
11 . [s]trategy" and "one of the money market funds in which
12 customer resources were allegedly invested through BLMIS . .
13 . has acknowledged that it did not even offer investment
14 opportunities in any such money market fund from 2005
15 forward." Id.

16 As is true of all Ponzi schemes, see Cunningham v.
17 Brown, 265 U.S. 1, 7 (1924) (describing the "remarkable
18 criminal financial career of Charles Ponzi"), Madoff used
19 the investments of new and existing customers to fund
20 withdrawals of principal and supposed profit made by other
21 customers. Madoff did not actually execute trades with
22 investor funds, so these funds were never exposed to the
23 uncertainties or fluctuations of the securities market.

1 Fictional customer statements were generated based on after-
2 the-fact stock "trades" using already-published trading data
3 to pick advantageous historical prices. J.A. Vol. I at 365-
4 66, 371, 512; J.A. Vol. II at 291, 293. The customer
5 statements documented an astonishing pattern of continuously
6 profitable trades, approximating the profits Madoff had
7 promised his customers, but reflected trades that had never
8 occurred. Although Madoff's scheme was engineered so that
9 customers always appeared to earn positive annual returns,
10 the dreamt-up rates of return Madoff assigned to different
11 customers' accounts varied significantly and arbitrarily.
12 In re Bernard L. Madoff, 424 B.R. at 130. Thus, the
13 customer statements reflected unvarying investor success;
14 but the only accurate entries reflected the customers' cash
15 deposits and withdrawals. J.A. Vol. I at 513.

16 Madoff's scheme collapsed when the flow of new
17 investments could no longer support the payments required on
18 earlier invested funds. See Eberhard v. Marcu, 530 F.3d
19 122, 132 n.7 (2d Cir. 2008) (describing typical Ponzi scheme
20 "where earlier investors are paid from the investments of
21 more recent investors . . . until the scheme ceases to
22 attract new investors and the pyramid collapses"). The
23 final customer statements issued by BLMIS falsely recorded

1 nearly \$64.8 billion of net investments and related
2 fictitious gains. J.A. Vol. I at 505. It is not contended
3 on this appeal that any victim knew or should have known
4 that the investments and customer statements were
5 fictitious. It is unquestioned that the great majority of
6 investors relied on their customer statements for purposes
7 of financial planning and tax reporting, to their terrible
8 detriment.

9 When Madoff's fraud came to light, the Securities and
10 Exchange Commission filed a civil complaint in the United
11 States District Court for the Southern District of New York,
12 alleging that Madoff and BLMIS were operating a Ponzi
13 scheme.³ The Securities Investor Protection Corporation
14 ("SIPC"), a nonprofit corporation consisting of registered
15 broker-dealers and members of national securities exchanges
16 that supports a fund used to advance money to a SIPA
17 trustee, then stepped in.⁴ 15 U.S.C. § 78ccc; Sec. & Exch.
18 Comm'n v. Packer, Wilbur & Co., 498 F.2d 978, 980 (2d Cir.
19 1974). SIPC filed an application in the civil action
20 seeking a decree that the customers of BLMIS are in need of

³ Madoff was arrested and charged with securities fraud; he pleaded guilty to an eleven-count criminal indictment and was sentenced to 150 years' imprisonment.

⁴ By virtue of its registration with the SEC as a broker-dealer, BLMIS is a member of SIPC.

1 the protections afforded by SIPA. 15 U.S.C.
2 § 78eee(a)(3)(A). The district court granted SIPC's
3 application; the protective order appointed Mr. Picard as
4 Trustee for the liquidation of the business of BLMIS and the
5 SIPA liquidation proceeding was removed to the bankruptcy
6 court. Id. § 78eee(b)(3)-(4); see also Sec. Investor Prot.
7 Corp. v. BDO Seidman, LLP, 222 F.3d 63, 67 (2d Cir. 2000).

8 SIPA establishes procedures for liquidating failed
9 broker-dealers and provides their customers with special
10 protections. In a SIPA liquidation, a fund of "customer
11 property," separate from the general estate of the failed
12 broker-dealer, is established for priority distribution
13 exclusively among customers. The customer property fund
14 consists of cash and securities received or held by the
15 broker-dealer on behalf of customers, except securities
16 registered in the name of individual customers. 15 U.S.C.
17 § 78111(4). Each customer shares ratably in this fund of
18 assets to the extent of the customer's "net equity." Id.
19 § 78fff-2(c)(1)(B). Under SIPA:

20 The term "net equity" means the dollar amount of
21 the account or accounts of a customer, to be
22 determined by--

23
24 (A) calculating the sum which would have been
25 owed by the debtor to such customer if
26 the debtor had liquidated, by sale or purchase
27 on the filing date, all securities positions

1 of such customer . . . ; minus

2
3 (B) any indebtedness of such customer to the
4 debtor on the filing date

5
6 Id. § 78111(11).

7 In many liquidations, however, the assets in the
8 customer property fund are insufficient to satisfy every
9 customer's "net equity" claim. In such a case, SIPC
10 advances money to the SIPA trustee to satisfy promptly each
11 customer's valid "net equity" claim. For securities
12 accounts, the maximum advance is \$500,000 per customer. Id.
13 § 78fff-3(a). For customers with claims for cash, the
14 maximum advance is substantially less. Id. § 78fff-3(a)(1),
15 (d). Under SIPA, all claims must be filed with the trustee,
16 id. § 78fff-2(a)(2), who is charged with determining
17 customer claims in writing. A customer's objection must be
18 filed with the bankruptcy court.

19 In satisfying customer claims in this case, Mr. Picard,
20 as the SIPA Trustee, determined that the claimants are
21 customers with claims for securities within the meaning of
22 SIPA. The Trustee further concluded that each customer's
23 "net equity" should be calculated by the "Net Investment
24 Method," crediting the amount of cash deposited by the
25 customer into his or her BLMIS account, less any amounts
26 withdrawn from it. J.A. at 274. The use of the Net

1 Investment Method limits the class of customers who have
2 allowable claims against the customer property fund to those
3 customers who deposited more cash into their investment
4 accounts than they withdrew, because only those customers
5 have positive "net equity" under that method. Some
6 customers objected to the Trustee's method of calculating
7 "net equity" and argued that they were entitled to recover
8 the market value of the securities reflected on their last
9 BLMIS customer statements (the "Last Statement Method").
10 After the filing of a number of objections, the Trustee
11 moved the bankruptcy court for an order affirming his use of
12 the Net Investment Method of calculating "net equity." Both
13 SIPC and the SEC submitted briefs supporting the Trustee's
14 motion.⁵

15 After a hearing, the bankruptcy court upheld the
16 Trustee's use of the Net Investment Method on the ground
17 that the last customer statements could not "be relied upon
18 to determine [n]et [e]quity" because customers' account
19 statements were "entirely fictitious" and did "not reflect

⁵ The SEC further argued that the Net Investment Method should be applied using inflation-adjusted dollars. The Trustee argued that the issue whether the Net Investment Method should be adjusted to account for inflation or interest was beyond the scope of the briefing and took no position on it.

1 actual securities positions that could be
2 liquidated” In re Bernard L. Madoff, 424 B.R. at
3 135. The bankruptcy court reasoned that the definition of
4 “net equity” under SIPA “must be read in tandem with SIPA
5 section 78fff-2(b), which requires the Trustee to discharge
6 [n]et [e]quity claims only ‘insofar as such obligations are
7 [1] ascertainable from the books and records of the debtor
8 or [2] are otherwise established to the satisfaction of the
9 trustee.’” Id. (quoting 15 U.S.C. § 78fff-2(b)(2)). The
10 bankruptcy court emphasized that the “BLMIS books and
11 records expose a Ponzi scheme where no securities were ever
12 ordered, paid for or acquired[,]” and concluded the Trustee
13 could not “discharge claims upon the false premise that
14 customers’ securities positions are what the account
15 statements purport them to be.” Id. The Net Investment
16 Method, unlike the Last Statement Method, allowed Mr. Picard
17 to (in the bankruptcy court’s phrase) “unwind[], rather than
18 legitimiz[e], the fraudulent scheme.” Id. at 136. The
19 bankruptcy court reserved decision on the issue of whether
20 the Net Investment Method should be adjusted to account for
21 inflation or interest. Id. at 125 n.8. The bankruptcy
22 court certified an immediate appeal to this Court, over
23 which this Court accepted jurisdiction, pursuant to 28
24 U.S.C. § 158(d)(2)(A).

1 **DISCUSSION**

2 We review the legal conclusions of the bankruptcy
3 court, including its interpretation of SIPA, de novo.
4 Turner v. Davis, Gillenwater & Lynch (In re Inv. Bankers,
5 Inc.), 4 F.3d 1556, 1560 (10th Cir. 1993). In conducting
6 our independent review, we consider that the views of the
7 Securities & Exchange Commission ("SEC") and SIPC are
8 "entitled to respect, but only to the extent that [they
9 have] the power to persuade." Chao v. Russell P. Le Frois
10 Builder, Inc., 291 F.3d 219, 228 (2d Cir. 2002) (internal
11 quotation marks and alterations omitted); see also In re New
12 Times Sec. Servs., Inc., 371 F.3d 68, 76 (2d Cir. 2004)
13 ("New Times I") (observing "that the drafters of SIPA
14 clearly envisioned roles for both the SEC and SIPC in
15 administering the statute").

16 The positions of the parties on appeal are as follows.
17 Mr. Picard asserts that the objecting BLMIS claimants are
18 customers with claims for securities under SIPA and that the
19 plain language of SIPA dictates that their "net equity" be
20 calculated based on the Net Investment Method. The SEC, as
21 amicus curiae, supports the Trustee's view that, here, the
22 Net Investment Method is required by the language of SIPA.
23 The SIPC--deemed to be a party in interest as to all matters