BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, NY 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201

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

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (BRL) SIPA LIQUIDATION (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. PETER B. MADOFF, MARK D. MADOFF, ANDREW H. MADOFF, and SHANA D. MADOFF, Defendants.	Adv. Pro. No. _____ (BRL)

COMPLAINT

Irving H. Picard, Esq. (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS" or, alternatively, the "Company" or the "Firm"), under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, et seq. ("SIPA"), and Bernard L. Madoff ("Madoff"), by and through his counsel, Baker & Hostetler LLP, for his Complaint against Peter B. Madoff, Mark D. Madoff, Andrew H. Madoff, and Shana D. Madoff (collectively, the "Family Defendants") based on actual knowledge and information and belief, states the following:

NATURE OF PROCEEDING

1. This adversary proceeding is the next step in the Trustee's continuing efforts to recapture and return the customer funds stolen through the Madoff Ponzi scheme. Through this action, the Trustee seeks a judgment in the aggregate amount of at least $198,743,299 against Madoff's brother, sons, and niece resulting from the preferential payments, fraudulent transfers, and fraudulent conveyances they received and their breaches of fiduciary duties and other tortious conduct that facilitated Madoff's crimes and enriched the Madoff family.

2. The Family Defendants were, and frequently held themselves out to be, business and securities regulatory compliance managers and principals of BLMIS. The Family Defendants' management responsibilities extended through trading operations, customer relationships, and legal and regulatory compliance. Yet the Family Members were completely derelict in these duties and responsibilities. As a result, they either failed to detect or failed to stop the fraud, thereby enabling and facilitating the Ponzi scheme at BLMIS. Simply put, if the Family Members had been doing their jobs—honestly and faithfully—the Madoff Ponzi scheme might never have succeeded, or continued for so long.

3. BLMIS was operated as if it were the family piggy bank. Each of the Family Defendants took huge sums of money out of BLMIS to fund personal business ventures and personal expenses such as homes, cars, and boats. The Family Defendants' misappropriations of BLMIS customer funds ranged from the extraordinary (the use of BLMIS customer funds to pay for multi-million dollar vacation homes) to the routine (the use of BLMIS customer funds to pay their monthly credit card charges for restaurants, vacations, and clothing). The means of diverting those customer funds ranged from the simple (merely transferring money to the Family Defendants' own personal bank accounts) to the complex (fabricating the purchases of securities on the Family Defendants' personal BLMIS investment advisory account statements and then cashing out of those positions). These transfers necessitate a judgment in favor of the Trustee for the benefit of BLMIS and its defrauded customers.

4. At this time, the Trustee has identified at least $198,743,299 of customer funds received by the Family Defendants. This amount, for the reasons set forth below, should be returned to the Trustee for the benefit of the customers of BLMIS. Included in this amount is $141,034,907 the Family Defendants received during the six-year period prior to Madoff's arrest and the demise of BLMIS on December 11, 2008. At least $58,666,811 of this amount is comprised of fraudulent transfers the Family Defendants received during the two-year period prior to December 11, 2008. Included in this amount is $7,364,048 in preference payments for certain antecedent debts made during the one-year statutory period (owing to the Family Defendants' status as insiders).

5. This adversary proceeding is brought pursuant to 15 U.S.C. §§ 78fff(b), 78fff-1(a), and 78fff-2(c)(3), and 11 U.S.C. §§ 105(a), 502(d), 542, 544, 547, 548(a), 550(a), and 551

(11 U.S.C. §§ 101 et. seq. are referred to herein as the "Bankruptcy Code"), and the New York Fraudulent Conveyance Act (N.Y. Debt. & Cred. §§ 270 et. seq.), and New York common law for a constructive trust, an accounting, to set aside preferences, fraudulent transfers, and fraudulent conveyances, and to recover the money improperly received by the Family Defendants from BLMIS due to their breaches of fiduciary duty, conversion, negligence, and unjust enrichment.

THE PARTIES

6. Defendant Peter B. Madoff is Bernard Madoff's brother, and was the Company's Senior Managing Director and Chief Compliance Officer ("CCO"). Peter had worked at BLMIS since 1965. He is a graduate of the Fordham University Law School. Peter was an experienced investment professional and held a number of industry licenses, including Series 1 (general securities representative pre-dating Series 7), Series 4 (options principal), and Series 55 (equity trader). Peter was involved professionally as a leader in the securities industry and, as such, gave the appearance of being concerned about improvements in the industry for the benefit of the investing public. He was Director of the Securities Industry Financial Markets Association ("SIFMA") and served as a member of the Board of Governors and Executive Committee of the National Stock Exchange. He also served as Vice Chairman of the Financial Industry Regulatory Authority ("FINRA") Board of Governors, on the Executive Committee Board of Governors of NASDAQ, and as a Director of the National Securities Clearing Corporation.

7. Defendant Mark D. Madoff is Bernard Madoff's son. He held the title of Co-Director of Trading at BLMIS. Mark also held the titles of Controller and Director at Madoff Securities International Ltd. ("MSIL"), a related British entity which helped Madoff and BLMIS

create the false impression that BLMIS actively traded shares in its customers' investment accounts. Mark had worked at BLMIS since 1986, upon graduating from the University of Michigan. Mark was an experienced investor and investment professional who directed many of the Company's customer relations efforts and, at times, managed both the Firm's proprietary trading desk and its market-making operations. Mark also held a number of securities licenses with FINRA while working at BLMIS, including Series 7, 24, and 55. He was also involved professionally as a leader in the securities industry and, as such, gave the appearance of being concerned about improvements in the industry for the benefit of the investing public. He was Chairman of the FINRA Inter-Market Committee, Governor of the Securities Traders Association ("STA"), Co-Chair of the STA Trading Committee, a member of the FINRA Membership Committee and Mutual Fund Task Force, President of the STA of New York ("STANY"), Chairman of the FINRA Regulation District Ten Business Conduct Committee, and Chairman of the SIFMA NASDAQ Committee.

8. Defendant Andrew H. Madoff is also Bernard Madoff's son. He shared the title of Co-Director of Trading at BLMIS with his brother, defendant Mark Madoff. He also held the titles of Controller and Director of MSIL. Andrew had worked at BLMIS since 1988, upon graduation from the University of Pennsylvania. Andrew was an experienced investor and investment professional who supervised trading at the Company, managed the trading floor, and directed many audit and compliance projects for the Company, including the confirmation and reporting of trades. He held a number of securities licenses with FINRA while working at BLMIS, including Series 4, 7, 24, and 55. Andrew was involved professionally as a leader in the securities industry and, as such, gave the appearance of an involved leader in the securities industry concerned about improvements in the industry for the benefit of the investing public. He

was Chairman of the Trading, Trading Issues and Technology, and Decimalization and Market Data Committees and Subcommittees at SIFMA, and a member of the FINRA District Ten Committee and NASDAQ's Technology Advisory Committee.

9. Defendant Shana D. Madoff is Bernard Madoff's niece and defendant Peter Madoff's daughter. Shana had worked at BLMIS since 1995, upon graduating from Fordham University Law School. At various times, Shana held herself out as Compliance Counsel, in-house Counsel, and Compliance Director of BLMIS. Shana was an experienced investment professional who, along with her father, Peter Madoff, and her uncle, Bernard Madoff, was responsible for overseeing all compliance-related activities at the Company. Shana was a member of the SIFMA Compliance and Legal Division Executive Committee, the FINRA Consultative Committee, STANY, the NASD's Market Regulation Committee, the SIFMA Self-Regulatory and SRO Committee, and the SIFMA Continuing Education Committee.

JURISDICTION AND VENUE

10. This is an adversary proceeding brought in this Court, in which the main underlying SIPA case, No. 08-01789 (BRL) (the "SIPA Case"), is pending. The SIPA Case was originally brought in the United States District Court for the Southern District of New York (the "District Court") as *Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC*, and with the consent of the Securities and Exchange Commission under 15 U.S.C. § 78eee(a)(4)(A), was combined with the Commission's action styled *Securities Exchange Commission vs. Bernard L. Madoff Investment Securities LLC et al.*, No. 08 CV 10791 (the "District Court Proceeding"). This Court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) and 15 U.S.C. §§78eee(b)(2)(A), (b)(4).

11. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (C), (E), (F), (H), and (O).

12. Venue in this district is proper under 28 U.S.C. § 1409.

BACKGROUND, THE TRUSTEE AND STANDING

13. On December 11, 2008 (the "Filing Date"), Bernard L. Madoff was arrested by federal agents for violation of the criminal securities laws, including, *inter alia*, securities fraud, investment adviser fraud, and mail and wire fraud. Contemporaneously, the Securities and Exchange Commission ("SEC") filed a complaint in the District Court which commenced the District Court Proceeding against Madoff and BLMIS. The District Court Proceeding remains pending in the District Court. The SEC complaint alleged that Madoff and BLMIS engaged in fraud through the investment adviser activities of BLMIS.

14. On December 12, 2008, Judge Louis L. Stanton of the District Court entered an order which appointed Lee S. Richards, Esq. as receiver for the assets of BLMIS (the "Receiver").

15. On December 15, 2008, pursuant to 15 U.S.C. § 78eee(a)(4)(A), the Securities and Exchange Commission consented to a combination of its own action with an application of the Securities Investor Protection Corporation ("SIPC"). Thereafter, pursuant to 15 U.S.C. § 78eee(a)(4)(B), 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 protections afforded by SIPA.

16. Also on December 15, 2008, Judge Stanton granted the SIPC application and entered an order pursuant to SIPA (the "Protective Decree"), which, in pertinent part:

(a) appointed the Trustee for the liquidation of the business of BLMIS pursuant to 15 U.S.C. § 78eee(b)(3);

(b) appointed Baker & Hostetler LLP as counsel to the Trustee pursuant to 15 U.S.C. § 78eee(b)(3); and

(c) removed the case to this Bankruptcy Court pursuant to 15 U.S.C. § 78eee(b)(4).

By this Protective Decree, the Receiver was removed as Receiver for BLMIS.

17. By orders dated December 23, 2008 and February 4, 2009, respectively, the Bankruptcy Court approved the Trustee's bond and found that the Trustee was a disinterested person. Accordingly, the Trustee is duly qualified to serve and act on behalf of the estate of BLMIS. In addition, the bankruptcy estate of Bernard L. Madoff, individually, was substantively consolidated into the estate of BLMIS by order of the Bankruptcy Court dated June 9, 2009.

18. At a plea hearing on March 12, 2009 in the case captioned *United States v. Madoff*, Case No. 09-CR-213(DC) (the "Plea Hearing"), Madoff pleaded guilty to an 11-count criminal information filed against him by the United States Attorney's Office for the Southern District of New York. At the Plea Hearing, Madoff admitted that he "operated a Ponzi scheme through the investment advisory side of [BLMIS]" (Plea Hearing Tr. at 23: 14-17) and he acknowledged that "[a]s I engaged in my fraud, I knew what I was doing [was] wrong, indeed criminal." (*Id.* at 23: 20-21). On June 29, 2009, Madoff was sentenced to a prison term of 150 years.

19. The Trustee has the job of recovering and paying out customer property to BLMIS's customers, assessing claims, and liquidating any other assets of the Firm for the benefit

of the estate and its creditors. The Trustee is in the process of marshalling BLMIS's assets and the liquidation of BLMIS's assets is well underway. The assets recovered, however, will not be sufficient to reimburse the customers of BLMIS for the billions of dollars that they invested with BLMIS over the years. Consequently, the Trustee must use his authority under SIPA and the Bankruptcy Code to pursue recovery from, among others, the Family Defendants who received money which belonged to BLMIS and its defrauded customers. Absent this and other recovery actions, the Trustee will be unable to satisfy the claims described in subparagraphs (A) through (D) of 15 U.S.C. § 78fff-2(c)(1).

20. Pursuant to 15 U.S.C. § 78fff-1(a), the Trustee has the general powers of a bankruptcy trustee in a case under the Bankruptcy Code (in addition to the powers granted by SIPA pursuant to 15 U.S.C. § 78fff(b)). Chapters 1, 3, 5, and Subchapters I and II of Chapter 7 of the Bankruptcy Code are applicable to this case to the extent consistent with SIPA.

21. Pursuant to 15 U.S.C.§§ 78fff(b) and 78lll(7)(B), the Filing Date is deemed to be the date of the filing of the petition and commencement of a case under the Bankruptcy Code.

22. The Trustee has standing to bring these claims pursuant to 15 U.S.C. § 78fff-1 and the Bankruptcy Code, including sections 323(b) and 704(a)(1), because, among other reasons:

(a) BLMIS incurred losses as a result of the claims set forth herein;

(b) the Trustee is a bailee of customer funds entrusted to BLMIS for investment purposes;

(c) the Family Defendants received "Customer Property" as defined in 15 U.S.C. § 78*lll*(4);

(d) SIPC has not reimbursed, and will not fully reimburse, the customers for their losses;

(e) the Trustee is the assignee of claims paid, and to be paid, to customers of BLMIS who have filed claims in the liquidation proceeding (such claim-filing customers, collectively, "Accountholders"). As of this date, the Trustee has received multiple express unconditional assignments of certain claims of the applicable Accountholders, which they could have asserted. As assignee, the Trustee stands in the shoes of persons who have suffered injury-in-fact, and a distinct and palpable loss for which the Trustee is entitled to reimbursement in the form of monetary damages;

(f) SIPC has expressly conferred upon the Trustee enforcement of its rights of subrogation with respect to payments it has made and is making to customers of BLMIS from SPIC funds; and

(g) the Trustee has the power and authority to avoid and recover transfers pursuant to sections 544, 547, 548, 550(a), and 551 of the Bankruptcy Code and 15 U.S.C. § 78fff-2(c)(3).

THE FRAUDULENT PONZI SCHEME

23. BLMIS is a New York limited liability company that was wholly owned by Bernard L. Madoff. It operated from its principal place of business in the "Lipstick Building" at 885 Third Avenue, in Manhattan. Madoff, as founder, chairman, and chief executive officer, ran BLMIS together with the Family Defendants. BLMIS was registered with the SEC as a securities

broker-dealer under § 15(b) of the Securities Exchange Act of 1934. (15 U.S.C. § 78*o*(b)). By virtue of that registration, BLMIS is a member of SIPC.

24. BLMIS was composed of three business units: a market-making business, a proprietary trading desk, and an investment advisory business. The proceeds of the Ponzi scheme were used to prop up all of the business units—none of which would have been profitable absent the fraudulent scheme from at least 2007 forward.

25. For years, the BLMIS investment advisory business (the "IA Business") purported to utilize a "split-strike conversion" strategy to generate enormous and steady financial returns for its customers. In truth, though, BLMIS never implemented this strategy, or any other. At the Plea Hearing, Madoff admitted that BLMIS never in fact purchased any of the securities it claimed to have purchased for customer accounts. The Trustee's investigation to date establishes that, to the extent that records are available, BLMIS never carried out an actual IA business; it simply deposited the customers' investment funds in a bank account and used the money to pay other customers' redemptions based on fictitious profits and for the personal enrichment of the Madoff family. The deceptive scheme worked as planned until, inevitably, customers' requests for redemptions overwhelmed the flow of new investments and caused the collapse of the Ponzi scheme in December 2008.

26. During the operation of the Ponzi scheme, when customers requested and received distributions of the purported "profits" in their accounts, they were paid with the monies invested by other customers. When customers redeemed or closed their accounts, they were paid amounts consistent with the fictitious customer statements they had been receiving, fostering the deception that their investments, and the corresponding profits and distributions received, were

legitimate. Because BLMIS was no more than a Ponzi scheme, however, the money those customers withdrew was simply the money invested by other customers.

27. Instead of using the customers' monies for investment in the split-strike conversion strategy, BLMIS used the customers' funds to continue operations and pay redemption proceeds to or on behalf of other investors and to make other improper transfers. Thus, due to the siphoning and diversion of new investments to pay requests for payments or redemptions from other account holders, BLMIS did not have the funds to pay customers on account of their new investments. BLMIS was able to stay afloat only by using the principal invested by newer customers to pay older customers.

THE COMPANY'S REQUIRED COMPLIANCE AND SUPERVISORY PROCEDURES SHOULD HAVE PREVENTED THE FRAUD

28. The Family Defendants each held senior management positions at BLMIS entailing legal compliance and/or supervisory responsibilities. The Company's compliance and supervisory policies (and the laws and regulations mandating those policies) were supposed to insure that suspicious and irregular activity would be caught, reported, and stopped. Instead, important compliance and supervisory roles were handed out to the Family Defendants who, rather than approach their jobs with appropriate professional diligence, failed to properly and faithfully carry out their duties and responsibilities. Those policies included the Company's "Internal Risk Management Controls" in which BLMIS stated that:

> Bernard L. Madoff Investment Securities LLC ("Madoff") takes very seriously its responsibility to maintain a stringent risk management supervisory system. Risk management includes the continuous identification, management, measurement and oversight of Madoff's various business risks. . . . Senior management . . . [is]. . . directly involved [in oversight through an] intricate system of supervision, review, and communication

> between Madoff's senior management, supervisory, trading, operations and systems personnel.

Not one of these assertions, however, was true. Senior management—the Family Defendants—did not do their jobs. Otherwise, the Ponzi scheme might have been detected and stopped many years ago.

29. In that same document, BLMIS claimed that it "has established and maintains … internal controls to ensure the integrity of the firm's written supervisory and operational procedures." As part of that supervision, "Senior Management" (which included each of the Family Defendants) was to communicate with "department managers on a daily basis to ensure proper procedures are being followed." The Company's Internal Audit Committee was also to conduct internal audits on a monthly or quarterly basis. Upon information and belief, none of this consistently occurred with the regularity required.

30. BLMIS did not register with the SEC as an Investment Adviser until September 2006. Due to the large number of its advisory customers, BLMIS should have registered as an Investment Adviser many years before that time. Even after its long-delayed registration, meaningful and accurate internal supervision and regulatory compliance never took place within the IA Business. For example, in or about January 2008, BLMIS filed a Form ADV for Investment Adviser Registration with the SEC. In the application, BLMIS represented that it had 23 customer accounts and assets under management of approximately $17.1 billion. In fact, in January 2008, BLMIS had over 4,900 open customer accounts with a purported value (based on customer account statements reflecting fictitious profits based on trades which, in fact, never took place) of approximately $68 billion under management. Upon information and belief, defendants Peter and Shana Madoff assisted in the completion of this filing with the SEC.

31. The Investment Advisory Manual for the IA Business required responsibilities and layers of oversight which were never fulfilled or implemented. Instead, the Company's compliance documents existed only to provide the appearance of compliance efforts, rather than to provide actual compliance with federal securities laws. For example, the September 2006 Compliance Manual stated that:

- BLMIS and its personnel are committed to serving the interests of its clients with the utmost professionalism and integrity.
- BLMIS and its personnel have a duty to disclose to Clients all material facts that may affect the services that BLMIS provides to the Clients.
- BLMIS and its personnel may not confer a benefit on one client to the disadvantage of another client, but rather must treat all clients equitably.
- BLMIS's records are maintained in a manner that provides for an accurate record of all financial transactions in conformity with generally accepted accounting principles. No false or deceptive entries may be made and all entries must contain an appropriate description of the underlying transaction. All reports, vouchers, bills, invoices, payroll and service records and other essential data must be accurate, honest and timely and should provide an accurate and complete representation of the facts.
- For each security in which either [sic] Client has a current position on any particular day, BLMIS must be able to promptly tell the SEC which Client owns the security and the current amount or interest of the Client in that security.

32. The September 2006 Compliance Manual placed responsibility on the shoulders of all of the Family Defendants, who each held senior management and supervisory positions at BLMIS:

- BLMIS's supervisory personnel are Bernard L. Madoff and Peter B. Madoff. Please note, however, that any person

> with the requisite degree of responsibility, ability, or authority to affect the conduct of the employee whose behavior is at issue may be deemed a 'supervisor.' A person's actual authority and responsibility, not merely title and status, determine whether that person is a 'supervisor.'

33. The September 2006 Compliance Manual required supervisory personnel to:

- monitor (or delegate and supervise the monitoring of) the activities of BLMIS personnel to ensure that the policies and procedures in this manual are being followed;
- respond to 'red flags' (such as indications that material nonpublic information has been inappropriately communicated or that insider trading has occurred) and reasonably correct problems that may arise;
- Any aberrational activity should prompt close attention. Supervisors should be skeptical of any failure to adhere to BLMIS policies and procedures. Once red flags have been detected, a supervisor has an affirmative duty to investigate any problem and follow up to ensure that the problem has been corrected.

The Family Members each turned two blind eyes to these duties.

34. These duties and responsibilities were not new to the Company due to its 2006 registration as an Investment Adviser. A 1998 Compliance Manual required the Company to follow "a policy of high ethical standards and strictly adhere to the dictates of sound investment principles and policies." The polices enumerated in the 1998 Compliance Manual were "designed to serve the interests of our customers and ensure compliance with all applicable securities regulations" and reminded all registered representatives, including Peter, Mark, and Andrew, that they had "a professional obligation to conduct your business affairs in a moral, ethical and legal manner."

35. The 1998 Compliance Manual designated Madoff as the principal to supervise the Company's registered personnel. Those supervisory duties were not exclusive to him, however, both as set forth in the Manual and based upon the duties FINRA-registered principals undertake when they assume such a position. In Madoff's absence, the Manual provided that Peter Madoff had that principal responsibility and, in his absence, "Mark D. Madoff shall be responsible for carrying on the Firm's policy." Later manuals say that Mark and/or Andrew are in charge in Madoff's absence.

36. In addition, the 1998 Compliance Manual required weekly compliance meetings by the Company's principals with the registered representatives to discuss compliance matters. There is no evidence of these meetings having been regularly held.

Peter Madoff's Compliance Responsibilities

37. Defendant Peter Madoff's duties and responsibilities were well-defined by law. Yet he failed miserably to meet them, to the financial detriment of the thousands of BLMIS customers victimized by the Ponzi scheme.

38. SEC Rule 206(4)-7 of the Advisers Act, adopted in September 2003, requires each registered adviser to designate a CCO to administer its compliance policies and procedures. The CCO is to be a person competent and knowledgeable regarding the Advisers Act—sufficiently senior and empowered with full responsibility and authority to develop and enforce these policies and procedures. Defendant Peter Madoff accepted this designation when the firm became registered as an investment adviser in 2006.

39. FINRA Rule 3130, first adopted in 2004, also required BLMIS, as a broker-dealer, to designate a principal of the firm as a CCO, who would meet at least annually with the

CEO to discuss the Firm's compliance efforts and to identify and address significant compliance problems and plans for emerging business areas. Peter Madoff was also CCO of BLMIS's broker-dealer business, but he clearly did not carry out this responsibility with any degree of diligence or integrity.

40. The supplementary materials to FINRA Rule 3130 describe the CCO's "unique and integral role" as an "indispensable party" to the firm's compliance certification. These materials explain that the CCO should have expertise in the process of gaining an understanding of the products, services, or line functions that need to be the subject of written compliance policies. The CCO is responsible for oversight of the line managers who are responsible for the execution of compliance policies and for developing programs to test compliance with the firm's policies and procedures.

41. BLMIS's own internal compliance policies also clearly set forth Peter Madoff's duties and responsibilities, yet those policies, too, were ignored routinely. In a 2007 report of its Annual Review (required by Rule 206(4)-7 of the Investment Advisers Act of 1940), BLMIS stated the following:

- The firm's Chief Compliance Officer ("CCO"), Peter Madoff, performs the Adviser's annual review. The CCO is qualified to perform such review based upon his knowledge of the Investment Adviser's Act of 1940. . . and of Madoff's advisory business.
- The CCO. . . reviewed the Adviser's business model in relation to the current written policies and procedures. Since Madoff's advisory business remained the same, the CCO found that the written policies and procedures were adequate.

- Since [BLMIS]'s business model remained unchanged, the CCO found the initial risk identification effective and the risk inventory comprehensive.

- The 2007 annual review assessed whether the firm had effectively implemented the Adviser's written policies and procedures as described in the [Compliance] Manual. The review demonstrated that the firm's written policies and procedures are effectively utilized in the firm.

- The CCO found that the implementation of the compliance procedures reflected good principles of management and control. The firm's existing compliance procedures were effective and no additional compliance procedures. . . are warranted.

- The CCO qualitatively tested the compliance procedures. It was demonstrated to the CCO that the reviews are reasonably designed to detect violations of the Investment Adviser Rules and federal securities laws applicable to the Adviser's business.

42. Peter was also given specific responsibilities in BLMIS's September 2006 Compliance Manual which, upon information and belief, he regularly ignored. For example:

- BLMIS has designated Peter Madoff as the Chief Compliance Officer ("Compliance Officer") to administer BLMIS's compliance policies and procedures in connection with its investment advisory business.

- All trading and operations personnel should alert the Compliance Officer immediately if there is any unusual activity in any account that BLMIS manages. This includes but is not limited to wire transfers, security transfers to unknown/unusual counterparties, transactions in securities away from the perceived market price, or any general unusual activity. Any such matter will be investigated immediately and with the utmost discretion.

- In order to verify compliance with [BLMIS's allocation and trade aggregation] policies and procedures, the Compliance Officer will conduct periodic reviews of allocation records in order to verify that order allocations are being made in accordance with the aforementioned allocation procedures. The Compliance Officer will also periodically compare the

> amount of designations made prior to the entry of an order with the actual allocations made.

Again, of course, Peter Madoff failed to carry out these duties and responsibilities.

Shana Madoff's Compliance Responsibilities

43. Defendant Shana Madoff, the niece of Bernard Madoff and the daughter of defendant Peter Madoff, was, as previously noted, in-house Counsel and Compliance Director at BLMIS. As Compliance Director, Shana was—or should have been, had she discharged her duties loyally, diligently, and carefully—aware that the IA Business did not, in fact, purchase or sell any securities with the billions of dollars held in customer accounts. Shana was, like her father, defendant Peter Madoff, responsible for monitoring BLMIS's operations and ensuring its compliance with the federal securities laws and regulations and corresponding FINRA rules and regulations. Shana assisted her father, for example, in drafting the annual review of the IA Business's compliance program. It would seem impossible for her to carry out her compliance duties, year in and year out, without questioning or wondering whether the Company's IA Business was a fraud.

44. Although Shana enjoyed the title of Compliance Director, it is obvious that she did not do her job. Shana was the sole custodian for most of the Company's compliance documents and regulatory materials, yet she ignored every red flag of the massive fraud taking place right in front of her.

45. In her role, she plainly understood and clearly communicated that there was no subdivision or segmentation of the compliance function as between the IA Business and the Company's market-making and proprietary trading functions. For example, Shana wrote a memo to her cousin, defendant Mark Madoff, on which she copied her father, defendant Peter

Madoff, in which she definitively declared: "The Compliance Departments' [sic] monitoring and oversight of compliance issues extends to all areas of the firm's business."

46. The Trustee has so far been unable to identify any evidence of meaningful compliance or supervisory activities relating to the IA business, however. Had Peter, as the CCO, or Shana, as Compliance Counsel, done their jobs properly, the fraud might have been revealed years earlier. Either they failed completely to carry out their required supervisory/compliance roles, or they knew about the fraud but covered it up.

The Sons' Supervisory Responsibilities

47. Mark and Andrew Madoff were each FINRA-registered securities principals of the Firm. As such, they had supervisory responsibilities to ensure compliance with the Firm's policies and procedures as well as with federal securities laws. The Trustee has so far been unable to identify any evidence of meaningful and consistent supervision by either of them, though. Had they made even the slightest attempt to fulfill their supervisory responsibilities, they would have been aware that no actual securities transactions were taking place within the IA Business for the accounts of the customers of BLMIS. Either they failed to completely carry out their supervisory roles, or they did so and covered up the fraud.

48. Mark and Andrew Madoff were, like their Uncle Peter Madoff, general securities principals at BLMIS pursuant to the FINRA Series 24 examination. The exam is designed to ensure that a principal of a broker-dealer has the requisite knowledge and competence, and serves to emphasize the principal's obligations to supervise the operations of a broker-dealer and its employees. Registered principals are responsible to ensure, among other things: (i) firm compliance; (ii) that regulatory requirements are met; and (iii) the establishment, maintenance,

and implementation of proper supervisory procedures. In these obligations, Mark and Andrew Madoff (like their Uncle Peter) failed the customers who opened accounts and entrusted their monies to BLMIS.

49. Although Mark and Andrew had important roles in BLMIS's market-making business and at its proprietary trading desk, they each at times played roles in the IA Business, as well. On information and belief, from time to time, Mark and Andrew had direct, investment-related contacts and communications with investors in the IA Business.

Supervisory And Compliance Failures Relating To MSIL

50. Among the charges to which Bernard Madoff pleaded guilty were two counts of money laundering. Frank DiPascali, another BLMIS employee, has also recently pleaded guilty to money laundering charges. These charges arose from the transfer of monies between BLMIS and MSIL, which appeared on the books and records of both those firms. Pursuant to the BLMIS Supervisory Compliance Procedures Manual, dated March 2007, the Firm maintained an Anti-Money Laundering compliance program which prohibited the very transactions to which Madoff pleaded guilty. The supervisory manual also required periodic review of large or suspicious transactions to uncover potentially illegal activities of this kind. Here, too, even a minimal level of diligence by the Family Defendants in carrying out their professional obligations might have protected BLMIS and its customers from the continuing fraud.

51. MSIL also maintained its own Compliance Manual which, upon information and belief, was last updated in March 2003. Andrew, Mark, and Peter were all Directors of MSIL and were designated as Approved Persons of MSIL by British regulatory authorities. The MSIL manual set forth "Statements of Principle for Approved Persons." These include acting with "due

skill, care and diligence in carrying out his controlled function," and taking "reasonable steps to ensure that the business of the firm for which he is responsible. . . is organized so that it can be controlled effectively." The Trustee has, so far, been able to find little written documentation evidencing that the required periodic supervisory review was regularly conducted on an on-going basis by Peter, Andrew, or Mark to ensure compliance with law. Again, their failures to discharge their duties enabled and facilitated the Ponzi scheme.

The Misuse Of IA Funds Permeated All Of BLMIS's Business Units

52. The money laundering through MSIL was not limited to the IA Business. The purportedly "legitimate" proprietary trading and market-making businesses at BLMIS were involved as well. All of the defendants knew or should have known that the majority of the revenue purportedly earned by the market-making and proprietary trading businesses, at least for fiscal years 2007 and 2008, was composed of "commission" income generated by the IA Business. This commission income itself was derived from purported trades which, in fact, never took place and was a term used to disguise the laundering of money from the IA Business. The "commission" was fraudulently transferred from the IA Business to the market-making and proprietary trading businesses, often through MSIL in transactions which had no legitimate business purpose, thus giving the appearance that the market-making and proprietary trading businesses were generating significant profits.

53. For fiscal year 2007, approximately $174 million dollars was transferred from the IA Business to an MSIL bank account. During this time period, approximately $103 million was transferred back to bank accounts controlled by BLMIS and appeared on the financial statements prepared for the market-making and proprietary trading businesses as commission income.

54. For fiscal year 2008, approximately $90 million dollars was transferred from the IA Business to an MSIL bank account. During this time period, approximately $86 million was transferred back to bank accounts controlled by BLMIS and appeared on the financial statements prepared for the market-making and proprietary trading businesses as commission income.

55. Based upon financial statements prepared by BLMIS for fiscal year 2007, this re-directed commission income represented approximately 60% of the total revenues reported by the market-making and proprietary trading businesses. For fiscal year 2008, this re-directed commission income represented more than 70% of the total revenues reported by the market-making and proprietary trading businesses.

56. The financial statements prepared by BLMIS for fiscal years 2007 and 2008 falsely indicated that the market-making and proprietary trading businesses generated tens of millions of dollars in net income. In reality, however, the market-making and proprietary trading businesses would have generated tens of millions of dollars in *losses* had it not been supported by the fraudulent transfer of customer money, disguised as commission income, from the IA Business.

57. As directors, supervisors and compliance officers of the market-making and proprietary trading businesses, had the defendants been faithfully carrying out their supervisory and managerial responsibilities, they either knew, should have known, or deliberately disregarded that the primary source of revenue for the market-making and proprietary trading businesses was, in fact, nothing more than money re-directed from the IA Business. Had they faithfully carried out their compliance, supervisory, and managerial responsibilities, they would have realized that the market-making and proprietary trading businesses were, in fact, incurring

tens of millions of dollars in losses and could not afford to pay the exorbitant salaries, bonuses, and other compensation paid to the defendants and others.

58. By virtue of their senior management positions at BLMIS, the defendants also knew, should have known, or deliberately disregarded that there was no trading conducted by the IA Business either at MSIL or at BLMIS which would have generated such commission income. The defendants did not ask any questions or otherwise seek to verify the legitimacy of the hundreds of millions of dollars which, in this manner, were effectively laundered from the IA Business. The defendants ignored these and other obvious red flags in order to continue to enrich themselves at the expense of the customers of BLMIS.

THE PONZI SCHEME BENEFITED THE FAMILY DEFENDANTS

59. The Madoff Ponzi scheme massively enriched the Family Defendants. Each received substantial transfers of money from BLMIS which properly belonged to the Company and, ultimately, its customers. Although many of these transfers were effected through paperwork that was falsified, backdated, or fabricated to make them look as if they were something other than the taking of BLMIS customer assets, in fact, these transfers came from the investment funds of customers for whom BLMIS was supposed to act as an honest investment adviser and fiduciary.

60. In addition, the Family Defendants "invested" in the Company's IA Business. Each held numerous IA accounts in their own names and in the names of their immediate family members. Unlike BLMIS's other customers, however, their actual principal investments were often minimal and, in certain cases, nonexistent. They each removed substantial sums from their

IA accounts in excess of the principal they invested, making them "net winners" subject to the avoidance claims asserted in this and other proceedings.

61. Like many of BLMIS's IA customers, the Family Defendants each received or viewed monthly account statements purporting to describe the performance of their investments. Unlike many of the ordinary IA Business customers who were duped by their account statements, however, the Family Defendants were—or should have been—aware at all times that at least some of the profits described in their IA account statements were a fiction. Each of them held senior managerial and supervisory or compliance roles at BLMIS and were experienced investors and securities professionals with regulatory FINRA licenses. Perhaps most obviously, as Co-Directors of Trading, Andrew and Mark were—or should have been—aware that no one was effecting trades within the IA Business, either in New York or in London, as claimed by Madoff or that the purported execution prices of IA Business trades were not attained by the proprietary trading and market-making traders reporting to them who dealt with real markets.

62. The Family Defendants also breached their fiduciary duties to BLMIS by diverting customer funds to invest in outside business ventures for their own personal enrichment. These obvious breaches of fiduciary duties were also violations of the terms of the Company's cynically-titled Code of Ethics and Trading Policy prohibiting employees from engaging "in any business other than the employee's employment with BLMIS" absent the prior written consent of the Compliance Officer (*i.e.* defendant Peter Madoff). This approval was also required pursuant to the Firm's various compliance manuals. On information and belief, such consent was never obtained—and certainly not consistently with duties of loyalty and care owed to the Company. The Family Defendants, all employed by BLMIS, spent considerable time and energy diverting

customers' funds and using them in a wide array of outside business ventures, ranging from real estate partnerships to hair salons, for their own personal benefit.

63. The Family Defendants used their IA Accounts to funnel BLMIS customers' money to themselves and their family members, as described in greater detail below. They each withdrew millions more than they invested into those accounts.

64. The Family Defendants failed to sufficiently perform any of the regulatory, supervisory, or compliance roles required of senior managers in a securities firm. They each received huge sums of money from BLMIS without any legitimate business purpose. None of them could have had a good-faith basis to believe either that they were entitled to the money or that it was the result of benefit or value they conferred to the Firm. They each failed to note or report any of the blatant irregularities and improbable gains reflected in their own personal IA accounts and in the Firm's business practices and operations.

Peter Madoff

65. The Trustee has thus far identified at least $60,631,292 that Peter Madoff received from BLMIS which is recoverable through this action. Between 2001 and 2008, Peter was paid a total of $20,067,920 in salary and bonus. In addition, he received over $3.5 million paid either directly to him or to vendors on his behalf as a "draw" during that same period. These purported "draws" all came directly from BLMIS's bank accounts.

66. Peter maintained two customer accounts with BLMIS. The Trustee has learned so far that Peter invested $32,146 into his accounts—including a grand total of only *fourteen dollars* after December 1995—yet he redeemed $16,252,004. It was—or at the very least,

should have been—obvious to Peter that the gains reflected in his IA account statements did not reflect actual securities transactions or market conditions during that time.

67. In fact, the Trustee has been unable to verify that any money was ever invested into one of Peter Madoff's investment accounts—account number 1M0174. Notwithstanding the lack of actual investment, the March 2002 account statement reflects transactions in Microsoft stock generating a purported gain of $8,752,620. These trades were a complete fabrication. Despite having no money or securities invested in the account, Peter's investment account suddenly shows that approximately $15.4 million worth of Microsoft stock had been "purchased" in or about December 2000 and "sold" in or about January 2002. The first evidence of this "purchase" of Microsoft stock does not appear until March 2002. Less than two months later, on or about May 17, 2002, Peter Madoff redeemed nearly $6 million from this account, which included the gains from the fabricated Microsoft transactions. The purchase and sale of Microsoft shares reflected on Peter Madoff's account statements were a complete fiction. They never occurred. They were simply typed out on his account statements to justify his withdrawal of nearly $6 million of other people's money.

68. Defendant Peter Madoff continued to withdraw sums of money far exceeding the invented gains of the fabricated Microsoft transaction. Between April 2003 and May 2005, he withdrew an *additional* $6.9 million from the same account.

69. Peter's investment account was again manipulated in September 2005 to falsely reflect the purchase of 125,000 shares of Apple Computer ("Apple") stock in or about January 2004, more than a year and a half earlier. The first evidence of this purported "purchase" does not appear until September 2005.

70. Peter's investment account suddenly reflects a stock split settling on March 2, 2005, and crediting the account with an additional 125,000 shares of Apple Computer stock. Although these stock splits were purportedly credited to Peter's account in March 2005, the first evidence of this split does not appear until September 2005. The entire 250,000 shares of Apple stock were "sold" immediately thereafter, in or about March 2005. Although the "sale" of Apple stock purportedly occurred in March 2005, the first evidence of this purported "sale" does not appear until September 2005.

71. The account statement purports to show a gain from these transactions of $8,117,500. Between September 2005 and April 2006, Peter redeemed $3,235,000 from this account, an amount that captured a great deal of the proceeds from the fictitious and backdated transactions in Apple stock. The Apple stock split and sale was designed to create the appearance of profitable trades in Peter's customer account when, in fact, none had occurred to justify his redemption of substantial sums at the expense of BLMIS and, ultimately, its customers.

72. Consistent with his level of financial experience and sophistication and his role as CCO, defendant Peter Madoff knew, or should have known, that the amounts withdrawn from his accounts were the product of fictitious and backdated trading activity and that the benefit he received was derived from purported transactions grounded in fraud and deception. He ignored obvious red flags that the profits reflected in account statements could not have been earned legitimately, to the detriment of BLMIS and its other customers. These fabricated profits, however, were only a fraction of the monies Peter was able to misappropriate from BLMIS.

73. In addition to these withdrawals from his "investment" accounts, Peter—and entities he owned and controlled—improperly received over $20 million in fraudulently diverted funds from BLMIS and related entities which belonged to the Company and, ultimately, to its defrauded customers. So far, the Trustee has identified the following transfers to Peter or on his behalf for which BLMIS received no corresponding benefit or value:

- On December 12, 2007, Bernard Madoff "loaned" Peter $9,000,000 at a low interest rate of 4.13%. Although the note was payable to Madoff, personally, the money for the loan came from the operating account for BLMIS's IA Business at JP Morgan Chase Bank (the "703 Account"). Despite the favorable terms, the Trustee has not discovered any evidence that interest or principal has been paid on this loan;

- On April 14 and June 2, 2004, $4.45 million was wired from the 703 Account to Peter in connection with the purchase of an apartment located at 975 Park Avenue, Apt. 6B, New York, NY;

- In April of 2001, Peter's sister-in-law, Ruth Madoff, "loaned" him $4,244,649.30 in connection with the purchase of a home located at 200 NW Algoma Road, Palm Beach, FL 33480. That money, however, was wired directly to Peter's real estate agents and lawyers from various BLMIS operating accounts;

- Between 1996 and 2008, BLMIS paid $1,016,622 (in 38 separate payments) from its account at the Bank of New York to the Peter B. Madoff Life Insurance Trust, funding a life insurance policy which named his family members as beneficiaries;

- Peter was also an investor in four limited partnerships operated by Sterling American Property, Inc. (the "Sterling Partnerships"). Between January 18, 2000 and April 11, 2006, the Sterling Partnerships received twelve payments totaling at least $896,744 from BLMIS on Peter's behalf;

- Peter held a 1% ownership stake in Madoff Brokerage Trading and Technology, LLC, which was financed by a $35,000 payment from one of BLMIS's operating accounts;

- Peter also held a 1% ownership stake in Madoff Technologies, LLC. On October 31, 2000, his portion of a capital call by that entity—$54,915.25—was paid by a transfer from one of BLMIS's operating accounts;

- MSIL paid approximately $274,562 out of its operating account (in four separate payments) for the purchase and restoration of Peter's Aston Martin automobile;

- Between 2002 and 2008, BLMIS funds were used to pay for $747,046 in personal expenses charged to Peter's American Express cards for personal expenses such as, for example, wines and luxury clothing.

Mark Madoff

74. The Trustee has thus far identified a total of at least $66,859,311 that Mark Madoff received improperly from BLMIS. Mark Madoff lived a high-end lifestyle with homes in Manhattan, Nantucket, and Greenwich, Connecticut. BLMIS funds paid for all aspects of his lavish lifestyle from the purchases of his high-end homes to the mattress and box spring he slept on, the television he watched in his home gym, and the outdoor shower in his home. In addition, BLMIS provided Mark Madoff with astronomical compensation—between 2001 and 2008, he was paid $29,320,830, including bonuses of $4.8 million in 2006 and over $9 million in 2007.

75. Beyond this amount, in a proof of claim filed with this Court, Mark seeks an *additional* $44,815,520 in deferred compensation. The Trustee has not, however, discovered any evidence that any of Mark's compensation was, in fact, deferred. In any event, these compensation amounts were based on or composed of the false profits reported by the Company's IA Business and represent the investments of BLMIS's customers and are, therefore, avoidable by the Trustee in this action.

76. Among other accounts, Mark maintained seven customer accounts with the IA Business for himself and his family members. The Trustee has identified documents purporting to show that Mark invested a total of $745,482 into those accounts. Nonetheless, Mark was able to redeem $18,105,456 from his investment accounts prior to December 2008. It was—or at the very least, should have been—obvious to Mark that the massive gains reflected in his customer account statements did not reflect actual securities transactions or market conditions.

77. One of these accounts—1M0142—was purportedly opened in July 1998. Although the Trustee has not found any record of money invested into that account, Mark redeemed $14,607,966 from that account alone.

78. Mark Madoff received millions of dollars as a result of fictitious and backdated transactions in his IA account. In July 1998, almost immediately after the account was opened, the account statement purported to show that thousands of shares of Dell Computer Corporation ("Dell") stock had been purchased in or about January 1997, more than *eighteen months before the account was opened.* These purchases occurred even though the account was never funded with cash or securities. In July 1998, the account statement suddenly reflects two stock splits in Dell: one settling on July 30, 1997, and another settling on March 11, 1998. Both of these splits took place after the shares were purportedly purchased, but before the account was opened. A July 21, 1998 entry on the account statement shows that the Dell shares were purportedly "sold," generating a "gain" of $1,985,000. Three days later, on or about July 24, 1998, $1,956,205 was redeemed from this account.

79. As of a few years later, no money or securities had been invested in this account. Nevertheless, the March 2002 account statement suddenly reflected that $9.9 million worth of

stock in Microsoft had been "purchased" over a year earlier in or about December 2000 and then "sold" in or about January 2002 creating a tidy profit of $5,628,860. Despite the earlier dates of these purported trades, the first evidence of this "purchase" of Microsoft stock does not appear until March 2002. On or about April 3, 2002, a substantial portion of the purported profits of these fictitious transactions—$5,331,853—was transferred from Mark's IA account to an outside account owned and controlled by him.

80. Similarly, in April 2004, despite having no money or securities invested in his account, an account statement shows that more than 2.9 million shares of stock in Lucent Technologies had been "purchased" in March 2003 and "sold" in April 2004 for a gain of over $7.5 million. Again, although these trades purportedly occurred in 2003, they do not appear in account statements until April 2004. At least $7.3 million of the proceeds of these fictitious trades were transferred from Mark's IA account to outside bank and brokerage accounts controlled by him.

81. Mark also established a customer account in July 1998 in the name of the "Children of Mark D. Madoff" with account number 1M0143. The account named Mark's brother, Andrew Madoff, as trustee. Upon information and belief, all investment decisions concerning this account were made by defendants Mark and Andrew Madoff. The Trustee has, so far, been unable to verify that any money was ever invested into this account, and upon information and belief, no money was, in fact, invested into this account.

82. In July 1998, the fraudulent transactions in Dell stock described above were repeated in the investment account held in trust for Mark Madoff's children. As in his own investment accounts, falsified purchases, splits, and sales of Dell stock purported to take place in

1997 and 1998, generating fictitious gains of $1,985,000. Just a few days after the alleged sale, on or about July 24, 1998, $1,956,205 was redeemed from this account. This financial chicanery enabled Mark Madoff to receive money from BLMIS and its customers by imagining and falsely documenting profitable transactions that never took place.

83. Consistent with his level of financial experience and sophistication and his supervisory position at BLMIS, defendant Mark Madoff knew, or should have known, that the amounts withdrawn from his and his children's accounts were the product of fictitious and backdated trading activity, and that the benefit received was derived from transactions that never took place. Defendant Mark Madoff ignored the obvious red flags that the profits reflected in these account statements were the product of fraud and deception, to the detriment of BLMIS and its other customers.

84. In fact, however, as set forth below, these purportedly massive profits were only a fraction of the money Mark was able to misappropriate from BLMIS. In addition to his sizeable compensation and the fabricated returns on his investment accounts, Mark received over $20 million in fraudulently diverted funds distributed from BLMIS to himself and to entities in which he had an interest for which BLMIS received no corresponding benefit or value:

- In May and June of 2008, $6,645,000 was transferred from the 703 Account directly to Mark's real estate attorney for the purchase of a home located at 51 Wanoma Way, Nantucket, MA 02554. Although this transfer took the form of a purported "loan" with a 3.2% interest rate, the Trustee has found no evidence that this loan was ever serviced or that any amount was repaid to BLMIS;
- In June 2005, Mark's mother, Ruth Madoff, purported to loan him $5,556,589 in connection with the purchase of an apartment located at 583 Broadway, Apt. 4M, New York, NY 10021. Those funds, however, originated from the 703

Account. The Trustee has found no evidence that this loan was ever serviced or that any amount was repaid to BLMIS;

- Only a year earlier, in March 2004, Mark's mother had purported to loan him $2,925,000 to purchase another Manhattan apartment. Once again, however, the money originated from the 703 Account, and the "loan" was never serviced or repaid;

- In February 2001, BLMIS sent four checks from its operating accounts totaling $1,232,680 to fund Mark's purchase of an apartment on Manhattan's Upper East Side;

- In 2000, Mark purchased a $2,242,500 home located at 21 Cherry Valley Road, Greenwich, CT 06831. On information and belief, this amount was funded directly from BLMIS's operating accounts. Again, some of these payments were documented as a purported "loan" from his mother, however the Trustee has found no evidence that such a loan was ever serviced or the amounts repaid to BLMIS;

- Mark held a 22.275% ownership stake in Madoff Brokerage Trading and Technology, LLC, which was financed by a $779,625 payment from one of BLMIS's operating accounts;

- BLMIS funds were used to pay for $797,113 in personal expenses charged to Mark's American Express card between 2002 and 2008.

Andrew Madoff

85. Like his brother, Andrew Madoff also lived a high-end lifestyle funded by the investment funds entrusted to BLMIS by its customers. The Trustee has thus far discovered $60,644,821 transferred from BLMIS to Andrew Madoff or to entities on his behalf. Between 2001 and 2008, Andrew was paid $31,105,505 in salary and bonus. His compensation included bonuses of over $4.8 million in 2006, and over $9 million in 2007, alone. Beyond this amount, in a proof of claim filed with this Court, Andrew seeks an *additional* $40,624,525 in deferred compensation. Although the Trustee has discovered self-serving documents, created by Andrew,

stating that he is owed over $9.5 million in deferred compensation as of March 2008, there is no evidence that anywhere near this level of compensation was, in fact, deferred. At any rate, in documents filed in connection with Andrew's divorce proceeding, he disclosed that his unpaid deferred compensation was only $52,173. On information and belief, these compensation amounts, if any, were based on or composed of the false profits reported in the Company's IA Business and the monies of other BLMIS customers, and are avoidable by the Trustee, as set forth below.

86. Among other accounts, Andrew maintained seven investment accounts in his name. The Trustee has learned so far that Andrew invested $912,062 into those accounts, yet was able to redeem $17,117,566 prior to December 2008. It was—or at the very least, should have been—obvious to Andrew that the gains reflected in his customer account statements did not reflect actual securities transactions or market conditions.

87. Most, but not all, of Andrew's IA account gains were withdrawn from customer account number 1M0140. Although the Trustee has not found that *any* money was invested into this account, over $14.5 million was redeemed between 1998 and November 2008.

88. The purported profits generated by this customer account were the result of brazenly fabricated transactions. In July 1998, almost immediately after the account was opened, the account statement purported to show that thousands of shares of Dell Computer Corporation stock had been purchased in or about January 1997, more than *eighteen months before the account was opened*. These purchases occurred even though the account was never funded with cash or securities. In July 1998, the account statements suddenly reflected two stock splits: one settling on July 30, 1997, and another on March 11, 1998, after the shares were purportedly

purchased, but before the account was purportedly opened. A July 21, 1998 entry on the account statement shows that the Dell shares were purportedly "sold," generating a gain of $1,985,000. Three days later, on or about July 24, 1998, $1,956,205 was redeemed from this account.

89. As of a few years later, Andrew had still not invested money or securities into this account. Yet, in March 2002, his account statement suddenly reflects that $9.9 million worth of stock in Microsoft had been "purchased" over a year earlier in or about December 2000 and "sold" in or about January 2002, at a tidy profit of $5,628,860. Despite the earlier dates of these purported trades, the first evidence of this "purchase" of Microsoft stock does not appear until March 2002. On or about April 3, 2002, a substantial portion of the purported profits of these fictitious transactions—$5,331,853—was transferred from Andrew's IA account to his account at Fidelity.

90. Similarly, in April 2004, again despite not having invested money or securities into his account, an account statement purported to show that more than 2.9 million shares of stock in Lucent Technologies had been "purchased" in March 2003 and "sold" in April 2004 for a gain of over $7.5 million. Although the first of these transactions purportedly took place in 2003, the first evidence of this "purchase" of Lucent stock does not appear on an account statement until April 2004. At least $7.3 million of the proceeds of these fictitious trades were transferred to bank and brokerage accounts controlled by Andrew.

91. Another account, number 1M0141, was opened in July 1998 in the name of the "Children of Andrew H. Madoff." The account named Andrew's brother, defendant Mark Madoff, as trustee. Upon information and belief, all investment decisions concerning this

account were made by defendants Mark and Andrew Madoff. The Trustee has, so far, been unable to verify that any money was ever invested into this account.

92. In July 1998, fraudulent transactions in Dell stock identical to those described above appeared in statements for this account. Falsified purchases, splits, and sales of Dell stock purporting to take place in 1997 and 1998, before the account was opened generated fictitious gains of $1,985,000. Just a few days after the alleged sale, on or about July 24, 1998, $1,956,205 was redeemed from this account. This financial chicanery enabled Andrew to improperly receive completely fictitious profits created by imagining and falsely documenting profitable transactions in his children's trust account that never took place.

93. Consistent with his level of financial experience and sophistication and his supervisory position at BLMIS, defendant Andrew Madoff knew, or should have known, that the amounts withdrawn from his and his children's trust accounts were the product of fictitious and backdated trading activity and that the redemptions were the product of transactions grounded in fraud and deception. Defendant Andrew Madoff ignored obvious red flags that the profits reflected in account statements could not have been earned legitimately, to the detriment of BLMIS and its other customers.

94. In addition to his sizeable compensation and the fabricated returns on his investment accounts, Andrew improperly received more than $13 million in fraudulently diverted funds distributed from BLMIS to himself and to entities in which he held an interest. So far, the Trustee has been able to identify the following distributions for which BLMIS received no corresponding benefit or value:

- In 2008, Bernard Madoff purported to "loan" Andrew $4,485,000 for the purchase of an apartment located at 433 E. 74th Street, Apt. 5E, New York, NY 10021. That money, however, was wired directly to Andrew's real estate agents and lawyers from the 703 Account. The Trustee has not discovered any evidence that this "loan" was ever serviced or repaid;

- On November 25, 2003, Ruth Madoff purported to "loan" Andrew $6.8 million to purchase another apartment located at 10 Gracie Square, Apt. 10G, New York, NY. That money, however, originated from the 703 Account and the Trustee has not found any evidence that this "loan" was ever serviced or repaid;

- Andrew held a 22.275% ownership stake in Madoff Brokerage Trading and Technology, LLC, which was financed by a $779,625 payment from one of BLMIS's operating accounts;

- Andrew's $300,000 interest in a business called Blow Styling Salon, LLC was funded with transfers from the 703 Account in May and September of 2008;

- In 2003, the $12,000 down payment on Andrew's boat was paid with a check issued by one of the BLMIS operating accounts;

- In 2002, BLMIS paid $68,900 to the Beacon Point Marine in Connecticut where, on information and belief, Andrew kept the boat paid for, in part, by BLMIS;

- In 2001 and 2002, BLMIS funds were used to pay $75,000 to "Lock and Hackle," a fly fishing and hunting membership club in Miami, Florida on Andrew's behalf;

- Between 2002 and 2008, BLMIS funds were used to pay for $813,287 in personal expenses charged to Andrew's American Express card such as clothes, boat rentals, and vacation travel for his wife and daughters.

Shana Madoff

95. The Trustee has thus far identified at least $10,607,876 that Shana Madoff received from BLMIS which is recoverable through this action.

96. Shana Madoff was well-compensated for her work as BLMIS's Compliance Director. Between 2001 and 2008, she was paid $3,832,878 in salary and bonus.

97. Shana maintained five accounts in the Company's IA Business for the benefit of herself and certain of her family members. The Trustee has learned so far that Shana invested $1,364,975 into those accounts, and redeemed $1,666,436 prior to December 2008. Those purported "gains" are subject to avoidance and should be returned for the benefit of those BLMIS customers who were not so fortunate.

98. In addition to these investment account redemptions, Shana, and entities in which she held an interest, improperly received over $6 million dollars in fraudulently diverted funds distributed from BLMIS which belonged to the Company and, ultimately, to its defrauded customers. So far, the Trustee has identified the following distributions to Shana, for which BLMIS received no corresponding benefit or value:

- On March 28 and May 8, 2008, a total of $2,899,000 million, originating from the 703 Account, was used to purchase Shana a home at 8 Barclay Court, East Hampton, NY 11937;
- Shana held a 22.275% interest in Madoff Technologies, LLC. On October 31, 2000, a capital call to that entity was satisfied by a payment from BLMIS's operating account, $1,223,237.19 of which was attributable to Shana's ownership stake;
- On or about July 2, 2007, Shana purchased a one-third stake in Madoff Energy Holdings, LLC for $2,370,000. $1,700,000 of that amount, however, was taken from various BLMIS operating accounts and recorded as a purported draw against her father, Peter Madoff's, compensation;

- In September and October of 2000, $30,000 was sent from BLMIS's operating account at the Bank of New York to Shana's interior decorator;
- Between 2002 and 2004, BLMIS paid $241,958 to the Glenwood Management Corporation for rent on Shana's apartment;
- Between 2002 and 2008, BLMIS funds were used to pay for $379,342 in personal expenses charged to Shana's American Express card such as clothing, cosmetics, and personal travel.

* * *

99. In addition to the transactions detailed above for each of the Family Defendants, the Trustee has identified an enormous sum in other payments from BLMIS to a variety of entities in which the Family Defendants hold ownership interests. The Trustee's investigation of these additional payments and entities is continuing.

NATURE OF THE CAUSES OF ACTION AGAINST THE FAMILY DEFENDANTS

100. At all times relevant hereto, BLMIS was insolvent in that: (i) its assets were worth billions of dollars less than the value of its liabilities; (ii) it could not meet its obligations as they came due; and/or (iii) at the time of the transfers to the Family Defendants described herein, BLMIS was left with insufficient capital.

101. This adversary proceeding is being brought to recapture monies paid to or for the benefit of the Family Defendants so that this customer property can be equitably distributed among the customers of BLMIS in accordance with the provisions of SIPA.

102. The Trustee also seeks an accounting for all monies received by the Family Defendants during their employment at BLMIS and a constructive trust as a result of the past unjust enrichment of—and to prevent any further unjust enrichment by—the Family Defendants

on all assets they acquired from BLMIS. This Trustee specifically looks to place many of the properties, described herein, which were purchased for the Family Defendants with BLMIS funds, in a constructive trust, to prevent their transfer, sale, or other dissipation during the pendency of this action. The accounting and constructive trust are necessary in this case in light of the size of the Ponzi scheme and the amount of money improperly transferred to the Family Defendants to finance their personal lives and personal investments.

103. Without regard to the extent to which they knew of Madoff's fraudulent scheme, or not, each of the Family Defendants knew or should have known that they were not entitled to these distributions of "free" company money. The Family Defendants were intimately involved with the "family business" and were close relatives of the mastermind of the Ponzi scheme. They sometimes traveled together, vacationed together, and spent many holidays together. The defendants all had senior positions at BLMIS. Among other things, and at the very least, the Family Defendants were on notice of the following indicia of irregularity and fraud but either failed to make sufficient inquiry or knew of the fraud, ignored it, and profited from it:

(a) Peter, Shana, Andrew, and Mark Madoff were integrally involved in BLMIS's proprietary trading and market-making operations. Each of them held numerous IA accounts and received monthly IA customer statements. They all were, or should have been, aware of the radically different methods of operations and purported results of performance of the IA Business and the actual results of the proprietary and market-making businesses.

(b) Financial industry press reports, including a May 27, 2001 article in Barron's entitled "Don't Ask, Don't Tell: Bernie Madoff is so secretive, he even asks investors to keep mum," and a May, 2001 article in MAR/Hedge, a newsletter widely-read by hedge fund industry

professionals, entitled "Madoff Tops Charts; Skeptics Ask How," raised serious questions about the legitimacy of BLMIS and Madoff. Those articles also questioned BLMIS's ability to achieve the IA Business returns purportedly attributable to Madoff's split-strike conversion strategy. Defendants Andrew and Mark Madoff read those articles and are alleged to have denied the charges to BLMIS employees.

(c) BLMIS did not provide most of its customers with electronic real-time online access to their accounts, which certainly by the year 2000 was customary in the industry. BLMIS also utilized outmoded technology, such as paper trading confirmations. This outdated practice stood in sharp contrast to Madoff's stated goal of being in the forefront of trading technology and his early use of computer-based trading. The use of paper confirmations helped facilitate the Ponzi scheme by making it easier to alter trading records than would modern automated methods. These and other outdated practices, such as the blanket prohibition on email communication by employees of the IA Business, should have been red flags to Peter, Andrew, Mark, and Shana based on their positions and corresponding responsibilities.

(d) Mark and Andrew Madoff supervised trading at the company's proprietary trading and market-making operations. They were, therefore, aware at all times—or, at the very least, should have been aware—of the trading volume and price ranges of the stocks traded by BLMIS. They knew or should have known that the profits and executions described in customers' account statements, including their own, did not correspond to actual market conditions.

(e) BLMIS functioned as both investment adviser to its customers and custodian of their securities. This arrangement eliminated another frequently utilized check and balance in

investment management by excluding segregation of duties between the custodian of securities and the investment adviser. This conflict heightened the potential for fraud and lack of transparency at BLMIS and was another red flag which required heightened scrutiny by the Family Defendants.

(f) BLMIS produced returns that were too good to be true, showing consistent profitability in both good times and bad that was simply not credible. Because of their senior supervisory positions, the Family Defendants should have recognized, for example, that the double digit returns their own IA accounts purported to show each year were not possible. In fact, other skilled hedge fund managers who attempted to employ the split-strike conversion strategy purportedly used by BLMIS consistently failed to generate anything close to its reported results.

(g) Although BLMIS would have had to execute massive options trades to implement the split-strike conversion strategy, its purported trading failed to have the expected impact such volume would have had on the options market indices. Indeed, there were not enough put option contracts available to place hedges in the size which BLMIS claimed to be implementing. Actual implementation of the purported split-strike conversion strategy based on the amount of advisory monies purportedly available for investment would have overwhelmed the options market. It certainly would have caused significant changes to market indices. The absence of these market impacts should have been noticed by the Family Defendants.

(h) BLMIS's customer statements reflected a consistent ability to trade securities near their monthly highs and lows to generate consistent and unusual profits (or, if requested by

investors to generate losses, to do the opposite). No investment professional could have reasonably believed that this could have been accomplished legitimately for so long.

(i) BLMIS, which reputedly ran the world's largest hedge fund, had its annual audits prepared by Friehling & Horowitz, an accounting firm of three employees, one of whom was semi-retired, with offices located in a strip mall. The Family Defendants, some of whom used Friehling & Horowitz to prepare their own tax returns, could not have reasonably believed it possible for any such firm to have competently audited an entity the size of BLMIS.

(j) BLMIS purported to convert all of the holdings for its customers' accounts to cash or United States treasury securities immediately before each quarter ended. This strategy had no practical benefit and could not have been effective in producing the fictitious consistent returns for these accounts, given the vagaries and cycles in the stock and options markets.

104. The transfers of money to the Family Defendants were and continue to be estate property within the meaning of section 542 of the Bankruptcy Code as well as customer property within the meaning of 15 U.S.C. §78*lll*(4), and are subject to turnover pursuant to section 542 of the Bankruptcy Code.

105. Those transfers are avoidable and recoverable under sections 544, 547, 548(a), 550(a), and 551 of the Bankruptcy Code, applicable provisions of SIPA, particularly 15 U.S.C. § 78fff-2(c)(3), and applicable provisions of N.Y. CPLR 203(g), and N.Y. Debt. & Cred. Law §§ 273-279.

106. A total of at least 383 transfers in the collective amount of $141,034,907 (the "Six-Year Transfers") were made during the six years prior to the Filing Date and are avoidable

and recoverable under sections 544, 550(a), and 551 of the Bankruptcy Code, applicable provisions of SIPA, particularly 15 U.S.C. § 78fff-2(c)(3), and applicable provisions of N.Y. Debt. & Cred. Law §§ 273-276.

107. Of the Six-Year Transfers, at least 129 in the collective amount of $58,666,811 were made during the two years prior to the Filing Date (the "Two-Year Transfers"), and are additionally recoverable under sections 548(a)(1), 550(a)(1), and 551 of the Bankruptcy Code and applicable provisions of SIPA, particularly 15 U.S.C. 78fff-2(c)(3).

108. Of the Two-Year Transfers, the compensation payments received by the four Family Defendants during the period from December 11, 2007 and the Filing Date in the collective amount of $7,364,048 were made during the one year period prior to the Filing Date (the "Preference Transfers"), and are additionally recoverable as avoidable preference payments under sections 547, 550(a), and 551 of the Bankruptcy Code and applicable provisions of SIPA, particularly 15 U.S.C. § 78fff-2(c)(3).

109. In addition, on the Filing Date the facts supporting this action could for the first time with reasonable diligence have been discovered by certain unsecured creditors of BLMIS. Therefore, the Trustee seeks $57,708,392 in transfers which took place earlier than the Six-Year Transfers.

110. To the extent that any of the recovery counts may be inconsistent with each other, they are to be treated as being pleaded in the alternative.

111. The Trustee's investigation is on-going and the Trustee reserves the right to: (i) supplement the information on the transfers and any additional transfers; and (ii) seek recovery of such additional transfers.

FIRST CAUSE OF ACTION
TURNOVER AND ACCOUNTING - 11 U.S.C. § 542

112. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

113. The transfers constitute property of the estate to be recovered and administered by the Trustee pursuant to section 541 of the Bankruptcy Code and 15 U.S.C. §§ 78fff-2(c)(3) and 78*lll*(4).

114. As a result of the foregoing, pursuant to section 542 of the Bankruptcy Code and 15 U.S.C. § 78fff-2(c)(3), the Trustee is entitled to the immediate payment and turnover from the Family Defendants of any and all transfers made by BLMIS, directly or indirectly, to any Family Defendant.

115. As a result of the foregoing, pursuant to section 542 of the Bankruptcy Code, the Trustee is also entitled to an accounting of all such transfers received by any Family Defendant from BLMIS, directly or indirectly.

SECOND CAUSE OF ACTION
PREFERENTIAL TRANSFERS - 11 U.S.C. §§ 547(b), 550, AND 551

116. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

117. At the time of each of the One Year Transfers (hereafter, the "Preference Period Transfers"), the Family Defendants were each a "creditor" of BLMIS within the meaning of section 101(10) of the Bankruptcy Code and pursuant to 15 U.S.C. § 78fff-2(c)(3).

118. At the time of each of the Preference Period Transfers, the Family Defendants were each an "insider" of BLMIS within the meaning of section 101(31) of the Bankruptcy Code.

119. Each of the Preference Period Transfers constitutes a transfer of an interest of BLMIS in property within the meaning of section 101(54) of the Bankruptcy Code and pursuant to 15 U.S.C. § 78fff-2(c)(3).

120. Each of the Preference Period Transfers was to, or for the benefit of, a Family Defendant.

121. Each of the Preference Period Transfers was made for or on account of an antecedent debt owed by BLMIS before such transfer was made.

122. Each of the Preference Period Transfers were made while BLMIS was insolvent.

123. Each of the Preference Period Transfers were made during the preference period under section 547(b)(4) of the Bankruptcy Code.

124. Each of the Preference Period Transfers enabled the Family Defendants to receive more than they would receive if: (i) this case was a case under chapter 7 of the Bankruptcy Code; (ii) the transfers had not been made; and (iii) that Defendant received payment of such debt to the extent provided by the provisions of the Bankruptcy Code.

125. Each of the Preference Period Transfers constitutes a preferential transfer avoidable by the Trustee pursuant to section 547(b) of the Bankruptcy Code and recoverable from the applicable Defendant pursuant to section 550(a).

126. As a result of the foregoing, the Trustee is entitled to a judgment pursuant to sections 547(b), 550, and 551 of the Bankruptcy Code: (i) avoiding and preserving the Preference Period Transfers; (ii) directing that the Preference Period Transfers be set aside; and (iii) recovering the Preference Period Transfers, or the value thereof, for the benefit of the consolidated estate of BLMIS.

THIRD CAUSE OF ACTION
FRAUDULENT TRANSFERS - 11 U.S.C. §§ 548(a)(1)(A), 550, AND 551

127. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

128. The Two-Year Transfers were made on or within two-years before the Filing Date.

129. The Two-Year Transfers were made by BLMIS with the actual intent to hinder, delay, and defraud some or all of BLMIS's then-existing or future creditors.

130. The Two-Year Transfers constitute a fraudulent transfer avoidable by the Trustee pursuant to section 548(a)(1)(A) of the Bankruptcy Code and recoverable from the Family Defendants pursuant to section 550(a) of the Bankruptcy Code, 15 U.S.C. § 78fff-2(c)(3).

131. As a result of the foregoing, pursuant to sections 548(a)(1)(A), 550(a), and 551 of the Bankruptcy Code and 15 U.S.C. § 78fff-2(c)(3), the Trustee is entitled to a judgment: (i)

avoiding and preserving the Two-Year Transfers; (ii) directing that the Two-Year Transfers be set aside; and (iii) recovering the Two-Year Transfers, or the value thereof, from the Family Defendants for the benefit of the consolidated estate of BLMIS.

FOURTH CAUSE OF ACTION
FRAUDULENT TRANSFERS - 11 U.S.C. §§ 548(a)(1)(B), 550, AND 551

132. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

133. The Two-Year Transfers were made on or within two years before the Filing Date.

134. BLMIS received less than a reasonably equivalent value in exchange for each of the Two-Year Transfers.

135. At the time of each of the Two-Year Transfers, BLMIS was insolvent, or became insolvent, as a result of the Two-Year Transfer in question.

136. At the time of each of the Two-Year Transfers, BLMIS was engaged in a business or a transaction, or was about to engage in business or a transaction, for which any property remaining with BLMIS was an unreasonably small capital.

137. At the time of each of the Two-Year Transfers, BLMIS intended to incur, or believed that it would incur, debts that would be beyond BLMIS's ability to pay as such debts matured.

138. At the time of each of the Two-Year Transfers, BLMIS made such transfers to or for the benefit of the insider Family Defendants under an employment contract and not in the ordinary course of business.

139. The Two-Year Transfers constitute fraudulent transfers avoidable by the Trustee pursuant to section 548(a)(1)(B) of the Bankruptcy Code and recoverable from the Family Defendants pursuant to section 550(a) of the Bankruptcy Code and 15 U.S.C. § 78fff-2(c)(3).

140. As a result of the foregoing, pursuant to sections 548(a)(1)(B), 550(a), and 551 of the Bankruptcy Code and 15 U.S.C. § 78fff-2(c)(3), the Trustee is entitled to a judgment: (i) avoiding and preserving the Two-Year Transfers; (ii) directing that the Two-Year Transfers be set aside; and (iii) recovering the Two-Year Transfers, or the value thereof, from the Family Defendants for the benefit of the consolidated estate of BLMIS.

FIFTH CAUSE OF ACTION
FRAUDULENT TRANSFERS - NEW YORK DEBTOR AND CREDITOR LAW
§§ 276, 276-a, 278 AND/OR 279, AND 11 U.S.C. §§ 544, 550(a), AND 551

141. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

142. At all times relevant to the Six-Year Transfers, there have been one or more creditors who have held and still hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

143. The Six-Year Transfers were made by BLMIS with the actual intent to hinder, delay, or defraud the creditors of BLMIS. BLMIS made the Six-Year Transfers to, or for the benefit of, the Family Defendants in furtherance of a fraudulent investment scheme.

144. As a result of the foregoing, pursuant to sections 276, 276-a, 278 and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a), and 551 of the Bankruptcy Code, and 15 U.S.C. § 78fff-2(c)(3), the Trustee is entitled to a judgment: (i) avoiding and preserving the Six-Year Transfers; (ii) directing that the Six-Year Transfers be set aside; (iii) recovering the Six-Year Transfers, or the value thereof, from the Family Defendants for the benefit of the consolidated estate of BLMIS; and (iv) recovering attorneys' fees from the Family Defendants.

SIXTH CAUSE OF ACTION
FRAUDULENT TRANSFER - NEW YORK DEBTOR AND CREDITOR LAW
§§ 273 AND 278 AND/OR 279, AND 11 U.S.C. §§ 544, 550(A), AND 551

145. The Trustee incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully rewritten herein.

146. At all relevant times there was and is at least one or more creditors who held and hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

147. BLMIS did not receive fair consideration for the Six-Year Transfers.

148. BLMIS was insolvent at the time it made each of the Six-Year Transfers or, in the alterative, BLMIS became insolvent as a result of each of the Six-Year Transfers.

149. As a result of the foregoing, the Trustee is entitled to a judgment pursuant to sections 273, 278, and 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a), and 551 of the Bankruptcy Code, and 15 U.S.C. § 78fff-2(c)(3): (i) avoiding and preserving the Six-Year Transfers; (ii) directing that the Six-Year Transfers be set aside; and (iii) recovering the Six-Year Transfers, or the value thereof, for the benefit of the consolidated estate of BLMIS.

SEVENTH CAUSE OF ACTION
FRAUDULENT TRANSFERS - NEW YORK DEBTOR AND CREDITOR LAW
§§274, 278 AND/OR 279, AND 11 U.S.C. §§ 544, 550(A), AND 551

150. The Trustee incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully rewritten herein.

151. At all relevant times there was and is at least one or more creditors who held and hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

152. BLMIS did not receive fair consideration for the Six-Year Transfers.

153. At the time BLMIS made each of the Six-Year Transfers, BLMIS was engaged or was about to engage in a business or transaction for which the property remaining in its hands after each of the Six-Year Transfers was an unreasonably small capital.

154. As a result of the foregoing, pursuant to sections 274, 278, and/or 279 of the New York Debtor and Creditor Law and sections 544, 550(a), and 551 of the Bankruptcy Code, and 15 U.S.C. § 78fff-2(c)(3), the Trustee is entitled to a judgment: (i) avoiding and preserving the Six-Year Transfers; (ii) directing that the Six-Year Transfers be set aside; and (iii) recovering the

Six-Year Transfers, or the value thereof, from the Family Defendants for the benefit of the consolidated estate of BLMIS.

EIGHTH CAUSE OF ACTION
FRAUDULENT TRANSFERS - NEW YORK DEBTOR AND CREDITOR LAW
§§ 275, 278, AND/OR 279, AND 11 U.S.C. §§ 544, 550(a), AND 551

155. The Trustee incorporates by reference the allegations contained in the previous paragraphs of the Complaint as if fully rewritten herein.

156. At all relevant times there was and is at least one or more creditors who held and hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

157. BLMIS did not receive fair consideration for the Six-Year Transfers.

158. At the time BLMIS made each of the Six-Year Transfers, BLMIS had incurred, was intending to incur, or believed that it would incur debts beyond its ability to pay them as the debts matured.

159. As a result of the foregoing, pursuant to sections 275, 278, and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a), and 551 of the Bankruptcy Code, and 15 U.S.C. § 78fff-2(c)(3), the Trustee is entitled to a judgment: (i) avoiding and preserving the Six-Year Transfers; (ii) directing that the Six-Year Transfers be set aside; and (iii) recovering the Six-Year Transfers, or the value thereof, from the Family Defendants for the benefit of the consolidated estate of BLMIS.

NINTH CAUSE OF ACTION
UNDISCOVERED FRAUDULENT TRANSFERS - NEW YORK CIVIL PROCEDURE LAW AND RULES 203(g), 213(8), AND NEW YORK DEBTOR AND CREDITOR LAW §§ 276, 276-a, 278, AND/OR 279, AND 11 U.S.C. §§ 544, 550(a), AND 551

160. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

161. At all times relevant to transfers, the fraudulent scheme perpetrated by BLMIS was not reasonably discoverable by at least one unsecured creditor of BLMIS.

162. At all times relevant to the transfers, there have been one or more creditors who have held and still hold matured or unmatured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were and are not allowable only under section 502(e).

163. The transfers were made by BLMIS with the actual intent to hinder, delay, or defraud the creditors of BLMIS. BLMIS made the transfers to or for the benefit of the Family Defendants in furtherance of a fraudulent investment scheme.

164. As a result of the foregoing, pursuant to CPLR § 203(g), 213(8), N.Y. Debtor and Creditor Law §§ 276, 276-a, 278, and/or 279, §§ 544(b), 550(a), and 551 of the Bankruptcy Code, and 15 U.S.C. § 78fff-2(c)(3), the Trustee is entitled to a judgment: (i) avoiding and preserving the Transfers; (ii) directing that the Transfers be set aside; (iii) recovering the Transfers, or the value thereof, from the Family Defendants for the benefit of the consolidated estate of BLMIS; and (iv) recovering attorneys' fees from the Family Defendants.

TENTH CAUSE OF ACTION
RECOVERY OF SUBSEQUENT TRANSFERS - NEW YORK DEBTOR AND CREDITOR LAW § 278 AND 11 U.S.C. §§ 544, 547, 548, 550(a), AND 551

165. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

166. Each of the transfers are avoidable under Sections 544, 547, and/or 548 of the Bankruptcy Code.

167. On information and belief, some or all of the transfers were subsequently transferred by one or more Family Defendants to another Family Defendant, either directly or indirectly (collectively, the "Subsequent Transfers").

168. Each of the Subsequent Transfers were made directly or indirectly to one or more of the Family Defendants or affiliated/other entities.

169. The Family Defendants are immediate or mediate transferees of the Subsequent Transfers.

170. As a result of the foregoing, pursuant to N.Y. Debtor and Creditor Law §278, §§ 544, 547, 548, 550(a), and 551 of the Bankruptcy Code, and 15 U.S.C. § 78fff-2(c)(3), the Trustee is entitled to a judgment against the Family Defendants: (i) avoiding and preserving the Subsequent Transfers; (ii) recovering the Subsequent Transfers, or the value thereof, from the Family Defendants for the benefit of the consolidated estate of BLMIS.

ELEVENTH CAUSE OF ACTION
DISALLOWANCE OF THE FAMILY DEFENDANTS' CLAIMS

171. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

172. As of the date hereof, the Trustee is aware of claims filed by Family Defendants Mark Madoff, Andrew Madoff, and Shana Madoff (collectively, the "Family Claims"). The Family Claims include claims relating to alleged securities positions, deferred compensation, salary and bonus payments, investments in MSIL, customer claims for investment accounts, claims in connection with the assertion of avoidance or similar causes of action against them, and claims based upon avoidance of transfers to them.

173. The Family Claims are not supported by the books and records of BLMIS nor the claim materials submitted by the Family Defendants, and, therefore, should be disallowed pursuant to section 502(b) of the Bankruptcy Code.

174. The Family Claims also should not be allowed as customer claims or as general unsecured claims. The Family Defendants are the recipients of transfers of BLMIS' property which are recoverable under Sections 544, 547, 548, and 550 of the Bankruptcy Code and 15 U.S.C. § 78fff-2(c)(3), and the Family Defendants have not returned the Transfers to the Trustee. As a result, pursuant to Section 502(d) of the Bankruptcy Code, the Family Claims must be disallowed unless and until the Family Defendants return the Transfers to the Trustee.

175. As a result of the foregoing, the Trustee is entitled to an order disallowing the Family Claims.

TWELFTH CAUSE OF ACTION
EQUITABLE SUBORDINATION

176. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

177. The Family Defendants each had relationships of trust and confidence with Madoff and BLMIS, held senior managerial, compliance, and/or supervisory responsibilities at BLMIS during the relevant time period, and consequently had fiduciary duties to act in the best interest of—and for the benefit of—BLMIS and its customers.

178. The Family Defendants each had fiduciary duties to act in the best interest of—and for the benefit of—BLMIS and its customers. Each of the Family Defendants acted in breach of the fiduciary duties owed to BLMIS and its customers by, among other things, the misuse of corporate assets, self-dealing, mismanagement, corporate waste, failure to prepare, implement and carry out compliance and supervisory responsibilities and policies, and breaches of the Family Defendants' duties to act with care, loyalty, and good faith and fair dealing as described above.

179. Because the Family Defendants were either derelict in their professional duties or complicit in the fraud at BLMIS, BLMIS and its creditors were damaged.

180. By reason of the above, pursuant to Section 510(c) of the Bankruptcy Code, the Trustee is entitled to a judgment disallowing or subordinating the Family Defendants' claims.

THIRTEENTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY

181. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

182. This claim for breach of fiduciary duty is asserted against each of the Family Defendants, who had relationships of trust and confidence with Madoff and BLMIS, held senior managerial, compliance, and/or supervisory responsibilities at BLMIS during the relevant time period, and consequently had fiduciary duties to act in the best interest of—and for the benefit of—BLMIS and its customers.

183. The fiduciary duties owed by each of the Family Defendants included duties of care and loyalty to BLMIS and its customers, and duties to act in good faith. They also had duties not to waste or divert the assets of BLMIS, duties not to exploit corporate opportunities for their own benefit, and duties not to act in furtherance of their own personal interests at the expense of BLMIS and its customers.

184. Each of the Family Defendants acted in breach of the fiduciary duties owed to BLMIS and its customers by, among other things, the misuse of corporate assets, self-dealing, mismanagement, corporate waste, failure to prepare, implement and carry out compliance and supervisory responsibilities and policies, and breaches of the Family Defendants' duties to act with care, loyalty, and good faith and fair dealing as described above.

185. As a direct and proximate result of the conduct by the Family Defendants, BLMIS and its customers were damaged.

186. By reason of the above, the Trustee, is entitled to an award of compensatory damages and disgorgement of all sums received by each Family Defendant from BLMIS in an amount to be determined at trial.

187. The Family Defendants' conscious, willful, wanton, and malicious conduct also entitles the Trustee to an award of punitive damages in an amount to be determined at trial.

FOURTEENTH CAUSE OF ACTION
CONVERSION

188. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

189. BLMIS had a possessory right and interest to its assets, including its customers' investment funds.

190. The Family Defendants converted the investment funds of BLMIS customers when they received money originating from other BLMIS customer accounts in the form of loans, payments, and other transfers. These actions deprived BLMIS and its creditors of the use of this money.

191. As a direct and proximate result of this conduct, BLMIS and its creditors have not had the use of the money converted by the Family Defendants.

192. By reason of the above, the Trustee, on behalf of BLMIS and its creditors, is entitled to an award of compensatory damages in an amount to be determined at trial.

193. The Family Defendants' conscious, willful, wanton, and malicious conduct entitles the Trustee, on behalf of BLMIS and its creditors, to an award of punitive damages in an amount to be determined at trial.

FIFTEENTH CAUSE OF ACTION
UNJUST ENRICHMENT

194. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

195. The Family Defendants each benefited from the receipt of money from BLMIS in the form of loans, payments, and other transfers which was the property of BLMIS and its customers, and for which the Family Defendants did not adequately compensate BLMIS or provide value.

196. This enrichment was at the expense of BLMIS and, ultimately, at the expense of BLMIS's other customers.

197. Equity and good conscience require full restitution of the monies received by the Family Defendants from BLMIS.

198. The Family Defendants conscious, intentional, and willful tortious conduct entitles BLMIS to recapture profits derived by the Family Defendants utilizing monies they received from BLMIS including, by way of example and without limitation, profits earned from real estate interests they purchased with BLMIS's customer funds.

199. By reason of the above, the Trustee, on behalf of BLMIS and its creditors, is entitled to an award of compensatory damages in an amount to be determined at trial.

SIXTEENTH CAUSE OF ACTION
NEGLIGENCE

200. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

201. Each of the Family Defendants had a duty to protect BLMIS and its customers against unreasonable risks and actions, including without limitation the loss of its customers' assets due to fraud, the self-dealing of management and senior executives, conversion of funds for personal use, the failure to prepare, implement, and carry out compliance and supervisory responsibilities and policies, and other tortious conduct by or unjust enrichment of the Family Defendants, Bernard Madoff, and others.

202. Each of the Family Defendants breached these duties by failing to conform to the appropriate standards of care commensurate with their senior positions at BLMIS.

203. As a direct and proximate cause of the actions of the Family Defendants, BLMIS has been damaged by the Family Defendants' negligence and failure to adhere to standards of appropriate care.

204. By reason of the above, the Trustee, on behalf of BLMIS and its creditors, is entitled to an award of compensatory damages in an amount to be determined at trial.

205. The Family Defendants' conscious, willful, wanton, and malicious conduct entitles the Trustee, on behalf of BLMIS and its creditors, to an award of punitive damages in an amount to be determined at trial.

SEVENTEENTH CAUSE OF ACTION
CONSTRUCTIVE TRUST

206. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

207. As set forth above, the assets of BLMIS have been wrongfully diverted as a result of fraudulent conveyances, fraudulent transfers, preferential transfers, breaches of fiduciary duties, conversions, and other wrongdoing of the Family Defendants for their own individual interests and enrichment.

208. The Trustee has no adequate remedy at law.

209. Because of the past unjust enrichment of the Family Defendants, the Trustee is entitled to the imposition of a constructive trust with respect to any transfer of funds, assets, or property from BLMIS as well as to any profits received by the Family Defendants in the past or on a going forward basis in connection with BLMIS.

210. In addition, upon information and belief, with the sums the Family Defendants received as a result of fraudulent conveyances, fraudulent transfers, preferential transfers, breaches of fiduciary duties, conversions, and other wrongdoing, the Family Defendants purchased the following properties, mentioned previously in this Complaint, which should be held in trust for the Trustee's use, benefit, and account: (i) 583 Broadway, Unit 4M, New York, NY 10012; (ii) 433 E. 74th St., Unit 5A, New York, NY 10021; (iii) 8 Barclay Court, East Hampton, New York, 11937; (iv) 21 Cherry Valley Road, Greenwich, CT 06870; (v) 200 NW Algoma Road, Palm Beach, FL 33480; and (vi) 51 Wanoma Way, Nantucket, MA 02554.

EIGHTEENTH CAUSE OF ACTION
ACCOUNTING

211. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Complaint as if fully rewritten herein.

212. As set forth above, the assets of BLMIS have been wrongfully diverted as a result of fraudulent conveyances, fraudulent transfers, preferential transfers, breaches of fiduciary duties, conversions, and other wrongdoing of the Family Defendants for their own individual interests and enrichment.

213. The Trustee has no adequate remedy at law.

214. To compensate BLMIS for the amount of monies the Family Defendants diverted from BLMIS for their own benefit, it is necessary for the Family Defendants to provide an accounting of any transfer of funds, assets, or property received from BLMIS, as well as to any profits in the past and on a going forward basis in connection with BLMIS. Complete information regarding the amount of such transfers misused by the Family Defendants for their own benefit is within their possession, custody, and control.

WHEREFORE, the Trustee respectfully requests that this Court enter judgment in favor of the Trustee and against the Defendants as follows:

(a) on the First Cause of Action, pursuant to Section 542 of the Bankruptcy Code and 15 U.S.C. § 78fff-2(c)(3): (i) that the property that was the subject of the Transfers be immediately delivered and turned over to the Trustee; and (ii) for an accounting by the Family Defendants of the property that was the subject of the Transfers or the value of such property;

(b) on the Second Cause of Action, pursuant to Sections 547(b), 550(a), and 551 of the Bankruptcy Code: (i) avoiding and preserving the Preference Period Transfers; (ii) directing that the Preference Period Transfers be set aside; and (iii) recovering the Preference Period Transfers, or the value thereof, from the Family Defendants for the benefit of the consolidated estate of BLMIS;

(c) on the Third Cause of Action, pursuant to Sections 548(a)(1)(A), 550(a), and 551 of the Bankruptcy Code and 15 U.S.C. § 78fff-2(c)(3): (i) avoiding and preserving the Two-Year Transfers; (ii) directing that the Two-Year Transfers be set aside; and (iii) recovering the Two-Year Transfers, or the value thereof, from the Family Defendants for the benefit of the consolidated estate of BLMIS;

(d) on the Fourth Cause of Action, pursuant to Sections 548(a)(1)(B), 550(a), and 551 of the Bankruptcy Code and 15 U.S.C. § 78fff-2(c)(3): (i) avoiding and preserving the Two-Year Transfers; (ii) directing that the Two-Year Transfers be set aside; and (iii) recovering the Two-Year Transfers, or the value thereof, from the Family Defendants for the benefit of the consolidated estate of BLMIS;

(e) on the Fifth Cause of Action, pursuant to Sections 276, 276-a, 278, and/or 279 of the New York Debtor and Creditor Law, Sections 544, 550(a), and 551 of the Bankruptcy Code, and 15 U.S.C. § 78fff-2(c)(3): (i) avoiding and preserving the Six-Year Transfers; (ii) directing that the Six-Year Transfers be set aside; (iii) recovering the Six-Year Transfers, or the value thereof, from the Family Defendants for the benefit of the consolidated estate of BLMIS; and (iv) recovering attorneys' fees from the Family Defendants;

(f) on the Sixth Cause of Action, pursuant to Sections 273, 278, and/or 279 of the New York Debtor and Creditor Law, Sections 544, 550, and 551 of the Bankruptcy Code, and 15 U.S.C. § 78fff-2(c)(3): (i) avoiding and preserving the Six-Year Transfers; (ii) directing that the Six-Year Transfers be set aside; and (iii) recovering the Six-Year Transfers, or the value thereof, from the Family Defendants for the benefit of the consolidated estate of BLMIS;

(g) on the Seventh Cause of Action, pursuant to Sections 274, 278, and/or 279 of the New York Debtor and Creditor Law, Sections 544, 550, 551, and 1107 of the Bankruptcy Code, and 15 U.S.C. § 78fff-2(c)(3): (i) avoiding and preserving the Six-Year Fraudulent Transfers; (ii) directing the Six-Year Transfers be set aside; and (iii) recovering the Six-Year Transfers, or the value thereof, from the Family Defendants for the benefit of the consolidated estate of BLMIS;

(h) on the Eighth Cause of Action, pursuant to Sections 275, 278, and/or 279 of the New York Debtor and Creditor Law, Sections 544, 550(a), 551, and 1107 of the Bankruptcy Code, and 15 U.S.C. § 78fff-2(c)(3): (i) avoiding and preserving the Six-Year Transfers; (ii) directing that the Six-Year Transfers be set aside; and (iii) recovering the Six-Year Transfers, or the value thereof, from the Family Defendants for the benefit of the consolidated estate of BLMIS;

(i) on the Ninth Cause of Action, pursuant to CPLR § 203(g), Sections 276, 276-a, 278, and/or 279 of the New York Debtor and Creditor Law, Sections 544, 550(a), and 551 of the Bankruptcy Code: (i) avoiding and preserving the Transfers; (ii) directing that the Transfers be set aside; (iii) recovering the Transfers, or the value thereof, from the Family Defendants for the benefit of the consolidated estate of BLMIS; and (d) recovering attorneys' fees from the Family Defendants.

(j) on the Tenth Cause of Action, pursuant to Section 278 of the New York Debtor and Creditor Law, Sections 544, 547, 548, 550(a), and 551 of the Bankruptcy Code, and 15 U.S.C. § 78fff-2(c)(3): (i) preserving the Subsequent Transfers; (ii) directing that the Subsequent Transfers be set aside; (iii) recovering the Subsequent Transfers, or the value thereof, from the family Defendants for the benefit of the consolidated estate of BLMIS; and (iv) recovering attorneys' fees from Family Defendants.

(k) on the Eleventh Cause of Action, that the claims of the Family Defendants be disallowed;

(l) on the Twelfth Cause of Action, that the claims of the Family Defendants be subordinated;

(m) on the Thirteenth Cause of Action against each of the Family Defendants for breaches of fiduciary duty, for compensatory damages, disgorgement of all sums received by each Family Defendant from BLMIS for the period in which they were in breach of their fiduciary duties, and punitive damages in an amount to be determined at trial;

(n) on the Fourteenth Cause of Action against each of the Family Defendants for the wanton, willful, and malicious conversion of BLMIS assets, for compensatory and punitive damages in amounts to be determined at trial;

(o) on the Fifteenth Cause of Action against each of the Family Defendants for unjust enrichment, for compensatory damages in an amount to be determined at trial;

(p) on the Sixteenth Cause of Action against each of the Family Defendants for negligence, for compensatory and punitive damages in an amount to be determined at trial;

(q) on the Seventeenth Cause of Action against each of the Family Defendants for the imposition of a constructive trust upon any transfer of funds, assets, or property received from BLMIS, including, without limitation, against those properties the Family Defendants purchased with fraudulently diverted BLMIS funds located at: (i) 583 Broadway, Unit 4M, New York, NY 10012; (ii) 433 E. 74th St., Unit 5A, New York, NY 10021; (iii) 8 Barclay Court, East Hampton, NY, 11937; (iv) 21 Cherry Valley Road, Greenwich, CT 06870; (v) 200 NW Algoma Road, Palm Beach, FL 33480; and (vi) 51 Wanoma Way, Nantucket, MA 02554, as well as to any profits in the past and on a going forward basis received by the Family Defendants in connection with BLMIS, in favor of the Trustee for the benefit of BLMIS's estate;

(r) on the Eighteenth Cause of Action against each of the Family Defendants for an accounting of any transfer of funds, assets, or property received from BLMIS as well as to any profits in the past an on a going forward basis received by the Family Defendants in connection with BLMIS;

(s) on all Claims for Relief, pursuant to federal common law and CPLR §§ 5001 and 5004 awarding the Trustee prejudgment interest from the date on which any transfer of BLMIS funds, assets, or property were received by each Family Defendant;

(t) awarding the Trustee all applicable attorneys' fees, interest, costs, and disbursements of this action;

(u) granting the Trustee such other, further, and different relief as the Court deems just, proper, and equitable.

Date: New York, New York
October 2, 2009

BAKER & HOSTETLER LLP

BY: *s/David J. Sheehan*

45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Email: dsheehan@bakerlaw.com
Marc E. Hirschfield
Email: mhirschfield@bakerlaw.com

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

Of Counsel:

John Siegal
Email: jsiegal@bakerlaw.com
Marc D. Powers
Email: mpowers@bakerlaw.com
Jimmy Fokas
Email: jfokas@bakerlaw.com
Adam B. Oppenheim
Email: aoppenheim@bakerlaw.com
Baker & Hostetler LLP
45 Rockefeller Plaza, 11th Floor
New York, NY 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201