

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-1789 (BRL)

SIPA Liquidation

**ORDER PURSUANT TO SECTIONS 1526, 1527 AND 105(a) OF THE
BANKRUPTCY CODE APPROVING PROTOCOLS BY AND BETWEEN
THE TRUSTEE AND THE JOINT PROVISIONAL LIQUIDATORS
OF MADOFF SECURITIES INTERNATIONAL LIMITED**

Upon the motion (the “Motion”)¹ of Irving H. Picard, Esq. (the “Trustee”) as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (the “Debtor” or “BLMIS”), seeking entry of an order, pursuant to sections 1526, 1527 and 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., approving the protocols, by and among the Trustee, SIPC, and the Joint Provisional Liquidators of Madoff Securities International Limited, and it appearing that due and sufficient notice has been given to all parties in interest; and it further appearing the relief sought in the Motion is appropriate based upon the record of the hearing held before this Court to consider the Motion; and it further appearing that this Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and after due deliberation; and sufficient cause appearing therefor; it is

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

ORDERED, that the Motion is granted in all respects; and it is further

ORDERED, that the Protocols are approved, and it is further

ORDERED, that the Trustee is authorized to take all actions necessary to effectuate the terms of the Protocols; and it is further

ORDERED, that the Trustee and the JPLs shall each comply with and carry out the terms of the Protocols.

Dated: New York, New York
June 9, 2009

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

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Hearing Date and Time: June 9, 2009 at 10:00 a.m.
Objection Deadline: June 5, 2009

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

UNITED STATES BANKRUPTCY COURT
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SIPA Liquidation

**MOTION FOR ENTRY OF ORDER PURSUANT TO SECTIONS 1526, 1527 AND
105(a) OF THE BANKRUPTCY CODE APPROVING PROTOCOLS BY AND
BETWEEN THE TRUSTEE AND THE JOINT PROVISIONAL LIQUIDATORS
OF MADOFF SECURITIES INTERNATIONAL LIMITED**

TO: THE HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE:

Irving H. Picard, Esq. (the "Trustee"), as trustee for the liquidation of the
business of Bernard L. Madoff Investment Securities LLC (the "Debtor" or "BLMIS"), by
and through his undersigned counsel, submits this motion (the "Motion") seeking entry of an

order, pursuant to sections 1526, 1527 and 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), seeking approval of certain protocols (collectively, the “Protocols”)¹ by and among the (i) Trustee and (ii) Stephen John Akers, Mark Richard Byers and Andrew Laurence Hosking, as joint provisional liquidators (collectively, the “JPLs”) of Madoff Securities International Limited (“MSIL”) and, in support thereof, the Trustee respectfully represents as follows:

BACKGROUND

1. On December 11, 2008 (the “Filing Date”),² the Securities and Exchange Commission (“SEC”) filed a complaint in the United States District Court for the Southern District of New York (the “District Court”) against defendants Bernard L. Madoff and the Debtor (together, the “Defendants”) (Case No. 08 CV 10791). The complaint alleged that the Defendants engaged in fraud through investment advisor activities of the Debtor.

2. On December 15, 2008, pursuant to section 78eee(a)(4)(A) of SIPA, the SEC consented to a combination of its own action with an application of the Securities Investor Protection Corporation (“SIPC”). Thereafter, pursuant to section 78eee(a)(3) of SIPA, SIPC filed an application in the District Court alleging, inter alia, that BLMIS was not able to

¹ The Protocols are annexed hereto as Exhibits “A” and “B.”

² Section 78lll(7)(B) of the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa et seq. (“SIPA”) states that the filing date is “the date on which an application for a protective decree is filed under 78eee(a)(3),” except where the debtor is the subject of a proceeding pending before a United States court “in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term ‘filing date’ means the date on which such proceeding was commenced.” Section 78lll(7)(B). Thus, even though the Application for a Protective Decree was filed on December 15, 2008, the Filing Date in this action is on December 11, 2008.

meet its obligations to securities customers as they came due and, accordingly, its customers needed the protection afforded by SIPA.

3. On that date, the District Court entered the Protective Decree, to which BLMIS consented, which, in pertinent part:

- (a) appointed the Trustee for the liquidation of the business of the Debtor pursuant to section 78eee(b)(3) of SIPA;
- (b) appointed Baker & Hostetler, LLP as counsel to the Trustee pursuant to section 78eee(b)(3) of SIPA; and
- (c) removed the case to this Court pursuant to section 78eee(b)(4) of SIPA.

4. On December 18, 2008, the District Court entered the Order on Consent Imposing Preliminary Injunction, Freezing Assets and Granting Other Relief Against Defendants.

5. MSIL is an English company that was engaged in the business of securities trading. Essentially, MSIL traded for the personal accounts of Bernard L. Madoff (“Madoff”) and members of his family. In addition, the bank accounts of MSIL were used by Madoff for a variety of purposes, including the purchase of personal assets such as luxury yachts, automobiles and furnishings for himself and members of his family. Madoff is the majority shareholder of MSIL and members of his family and other associates own the remainder of the shares.

6. On December 19, 2008, on an application by the directors of MSIL, the High Court of Justice, Chancery Division, Companies Court in the United Kingdom (the “British Court”) entered an Order placing MSIL in provisional liquidation and appointing the JPLs. The Trustee was recognized as a foreign representative and the SIPA proceeding was recognized as a foreign main proceeding by the British Court, pursuant to an order dated

March 3, 2009. An order for cooperation between the Trustee and the JPLs was entered by the British Court on March 6, 2009.

7. The JPLs filed a petition for recognition as a foreign main proceeding in the United States Bankruptcy Court for the Southern District of Florida on April 14, 2009, as provided in section 1509 of the Bankruptcy Code. On the same day, the JPLs were granted full administration and realization of all assets of MSIL in the United States.

8. After a hearing in this Court on May 6, 2009, the recognition proceeding was transferred to the United States District Court for the Southern District of New York pursuant to Rule 1014 of the Federal Rules of Bankruptcy Procedure. This Court adjourned the hearing for recognition and, pursuant to Rule 2002(q) of the Federal Rules of Bankruptcy Procedure, a hearing for recognition is scheduled for June 9, 2009.

THE PROTOCOLS

9. As the Court is aware, it has been, and it continues to be, the Trustee's paramount goal to maximize recoveries in order to compensate the victims of Madoff's sordid scheme. In furtherance of that goal, the Trustee believes that it is appropriate to prevent duplication of effort, maximize efficiencies and minimize expenses. For these reasons, the Trustee believes that it is appropriate and consistent with the relevant provisions of the Bankruptcy Code to enter into the Protocols.

10. The nature of the business and the fraud conducted by Bernard Madoff is such that each of BLMIS and MSIL is likely to have assets and/or liabilities in both England and the United States (as well as many other jurisdictions). Furthermore, while more investigation is required, it is apparent that the affairs of BLMIS and MSIL are closely intertwined. In fact, BLMIS appears to be the largest creditor of MSIL. As a result,

evidence relating to the assets and liabilities of each of BLMIS and MSIL may be held by the other entity.

11. The Trustee, SIPC and the JPLs believe that the proper administration of each of the estates is dependent on cooperation and information sharing.

12. Accordingly, the Trustee and the JPLs have entered into the two Protocols. First, the Trustee and the JPLs have entered into the Cross-Border Insolvency Protocol for the Bernard Madoff Group of Companies (the "Cross-Border Protocol"). A copy of the Cross-Border Protocol is attached hereto as Exhibit "A." A summary of the principal terms of the Cross-Border Protocol is set forth below.³

- Where possible, the Representatives shall have the right to appear in all Proceedings and the Representatives shall provide each other with notice of any hearing, meeting, application, statutory deadline, or other matter in which the relevant Representative has an interest.
- To the extent appropriate, each Representative shall keep the other apprised of their activities and all relevant information and material developments, and will share non-public information regarding BLMIS and MSIL. All communications between the Representatives shall subject to the relevant privilege. In this regard, the Representatives and SIPC have entered into an agreement regarding confidentiality and/or privileged information of common interest.
- It is intended that the Guidelines Applicable to Court-to-Court Communications in Cross-Border cases be formally adopted by each Tribunal.
- Each Representative will coordinate and cooperate regarding the identification, preservation and realization of assets that the other may have an interest in. The Representatives will quickly determine which Representative is best placed to deal with the assets and will assist each other in the recovery of identified assets.

³ Terms not defined in this section shall have the meaning ascribed in the Cross-Border Protocol. The following is intended to be merely a summary of the Cross-Border Protocol and the Court is respectfully referred to the Cross-Border Protocol itself for a full statement of its content.

- The Representatives agree to cooperate in good faith with respect to potential claims between BLMIS and MSIL.
- The Representatives will coordinate with each other regarding cooperation with law enforcement or other agencies.

13. The Trustee and the JPLs have also entered into an Information Sharing Protocol (the “Information Protocol”), a copy of which is attached as Exhibit “B.” Pursuant to the Information Protocol, the Trustee and the JPLs have agreed to the sharing of information regarding the affairs of BLMIS and MSIL, including by their respective agents, FTI Consulting, Inc. and Grant Thornton UK LLP (collectively, the “Investigators”). The Information Protocol sets out categories of information that, subject to objection by the Trustee or the JPLs, may be freely communicated between the Investigators; for example any communications between BLMIS and MSIL. The Trustee and the JPLs have agreed that any information received will be used only to assist the Trustee and the JPLs in their court-appointed roles.

14. Finally, the Trustee and the JPLs believe that there is a substantial alignment of interest between BLMIS and MSIL and have been engaged in constructive discussions concerning the collection and ultimate distribution of assets consistent with the governing law of their respective jurisdictions and the overall goal of avoiding duplication of effort and maximizing restitution to victims. The Trustee and the JPLs anticipate further filings in their respective courts at the appropriate time.

LEGAL ARGUMENT

15. Given the interrelated nature of the Madoff business and fraud, the proper administration of the estates of BLMIS and MSIL is dependent on cooperation and information sharing. The Protocols will allow for the most efficient administration of the two estates and will prevent duplicative efforts by the Trustee and the JPLs. The Protocols

establish a framework for the coordination of the estates of BLMIS and MSIL and are structured to insure that information is shared appropriately.

16. In addition, the Protocols are consistent with section 1526 and 1527 of the Bankruptcy Code. Section 1526 requires a trustee to, subject to the supervision of the Court, cooperate to the maximum extent possible with a foreign court or foreign representative. 11 U.S.C. § 1526. Further, section 1527 provides that the cooperation described in section 1526 may be implemented by any appropriate means, including “the approval or implementation of agreements concerning the coordination of proceedings.” 11 U.S.C. § 1527. The Trustee submits that the Protocols satisfy the cooperation mandate created by these sections of the Bankruptcy Code.

17. Accordingly, it is the view of the Trustee that the Protocols are appropriate and should be approved by this Court.

NOTICE

18. Notice of this Motion has been given to (i) SIPC; (ii) the JPLs, (iii) the SEC; (iv) the Internal Revenue Service; and (v) the United States Attorney for the Southern District of New York. The Trustee shall also serve, by way of the ECF filing that will be made, each person or entity that has filed a notice of appearance in this case. The Trustee submits that no other or further notice need be given. and respectfully requests that the Court find that such notice is proper and sufficient.

WHEREFORE, the Trustee respectfully requests entry of an Order substantially in the form of Exhibit “C” granting the relief requested herein.

Dated: New York, New York
May 29, 2009

Respectfully submitted,

/s/ Marc Hirschfield

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Hearing Date and Time: June 9, 2009 at 10:00 a.m.
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Trustee for the SIPA Liquidation of
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UNITED STATES BANKRUPTCY COURT
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SIPA Liquidation

**NOTICE OF MOTION FOR ENTRY OF ORDER PURSUANT TO
SECTIONS 1526, 1527 AND 105(a) OF THE BANKRUPTCY CODE APPROVING
PROTOCOLS BY AND BETWEEN THE TRUSTEE AND THE JOINT PROVISIONAL
LIQUIDATORS OF MADOFF SECURITIES INTERNATIONAL LIMITED**

Irving H. Picard, Esq. (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (the "Debtor" or "BLMIS"), by and through his undersigned counsel, will move before the Honorable Burton R. Lifland, United States

Bankruptcy Judge, at the United States Bankruptcy Court, the Alexander Hamilton Customs House, One Bowling Green, New York, New York 10004-1408, on June 9, 2009 at 10:00 a.m., or as soon thereafter as counsel may be heard, seeking entry of an order, pursuant to sections 1526, 1527 and 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., approving certain protocols annexed to the motion (the "Motion") by and between the Trustee and the Joint Provisional Liquidators of Madoff Securities International Limited, as more particularly set forth in the Motion.

PLEASE TAKE FURTHER NOTICE that written objections to the Motion must be filed with the Clerk of the United States Bankruptcy Court, One Bowling Green, New York, New York 10004 by no later than **5:00 p.m. on June 5, 2009** (with a courtesy copy delivered to the Chambers of the Honorable Burton R. Lifland) and must be served upon (a) Baker & Hostetler, LLP, counsel for the Trustee, 45 Rockefeller Plaza, New York, New York 10111, Attn: Marc Hirschfield, (b) the Securities Investor Protection Corporation, 805 Fifteenth Street, N.W., Suite 800, Washington, D.C. 20005, Attn: Kevin Bell, and (c) Baach Robinson & Lewis, counsel to the Joint Provisional Liquidators, 1201 F Street, N.W., Suite 500, Washington, D.C. 20004, Attn: H. Bradford Glassman. Any objections must specifically state the interest that the objecting party has in these proceedings and the specific basis of any objection to the Motion.

Dated: New York, New York
May 29, 2009

Respectfully submitted,

/s/ Marc Hirschfield

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Trustee for the SIPA Liquidation of Bernard L.

Madoff Investment Securities LLC

EXHIBIT A
CROSS-BORDER PROTOCOL

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**CROSS-BORDER INSOLVENCY PROTOCOL
FOR THE BERNARD MADOFF GROUP OF COMPANIES**

This cross-border insolvency protocol (the "**Protocol**") establishes a framework for cooperation between, and coordination of, the liquidation proceedings of Bernard L. Madoff Investments Securities LLC ("**BLMIS**") and Madoff Securities International Limited ("**MSIL**") (collectively, the "**Debtors**").

Background

A. The Proceedings

On 15 December 2008, Irving H. Picard was appointed as trustee for the liquidation of the business of BLMIS (the "**Trustee**") following an application to the United States District Court for the Southern District of New York by the Securities Investor Protection Corporation ("**SIPC**").

On 19 December 2008, Mark Richard Byers, Andrew Lawrence Hosking and Stephen John Akers were appointed joint provisional liquidators of MSIL (the "**JPLs**"), following the presentation of a winding up petition by the directors of MSIL.

In their respective proceedings, the JPLs and the Trustee have been appointed, *inter alia*, to manage and/or liquidate the relevant Debtor's affairs, to collect and realise its assets, and as the representative of its estate (collectively the "**Representatives**").

The provisional liquidation of MSIL before the High Court of Justice, Chancery Division in England (the "**English Court**") and the BLMIS liquidation proceeding in the United States Bankruptcy Court for the Southern District of New York (collectively the "**Tribunals**" and the "**Proceedings**") may in due course be supplemented by proceedings in other jurisdictions.

The Trustee has already, on 27 February 2009, been recognised by the English Court as the "*foreign representative*" of BLMIS pursuant to the Cross-Border Insolvency Regulations 2006.

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The JPLs were granted full administration and realisation of all of the assets of MSIL in the United States as provided in 11 U.S.C. § 1509 upon the recognition of the Provisional Liquidation as a foreign main proceeding by the United States Bankruptcy Court for the Southern District of Florida on 14 April 2009 which proceeding was transferred to the United States Bankruptcy Court for the Southern District of New York pursuant to Bankruptcy Rule 1014.

B. The Debtors

BLMIS was a securities broker-dealer and investment adviser established in New York, with its office at 885 Third Avenue. It is registered with the US Securities and Exchange Commission and is a member of both the Financial Industry Regulatory Authority and SIPC. The sole member of BLMIS is Bernard L. Madoff.

MSIL is a company incorporated in England and Wales. It was authorised and regulated by the FSA. Mr Madoff is the principal shareholder in MSIL.

On 11 December 2008, Mr Madoff reportedly confessed to an agent of the US Federal Bureau of Investigation that BLMIS' investment advisory business in fact amounted, in his own words, to *"a giant Ponzi scheme"*.

This is a fraud of potentially unprecedented scale and breadth. Mr Madoff has himself estimated the losses from this fraud to be in the region of US\$50 billion.

C. The Need for a Protocol

The nature of the business and the fraud conducted by Mr Madoff is such that each of the Debtors is likely to have assets and/or liabilities in both England and the United States (as well as many other jurisdictions). Furthermore, whilst the precise nature of the relationships between BLMIS and MSIL requires further investigation, the affairs of the two companies are closely intertwined. As a result, evidence relating to the assets and liabilities of each Debtor is held by the other Debtor.

Both the Trustee and the JPLs therefore consider the proper administration of each of the Proceedings to be dependent upon cooperation between the Representatives, and that it is

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in their common interest to share information with each other expeditiously relating to the affairs of the two companies.

The need to share information has been recognised by the English Court. The Order appointing the JPLs on 19 December 2009 expressly provides that the JPLs shall cooperate as shall be appropriate with the Trustee. On 27 February 2009, a further Order was made by the English Court which provides that the JPLs be at liberty, subject to their being satisfied that the provision of the information is in the interests of the provisional liquidation of MSIL, to disclose to the Trustee broad categories of information. The English Court held that the provision of such information is necessary, *inter alia*, for the proper conduct of the provisional liquidation of MSIL and in connection with the liquidation of BLMIS.

As part of the information sharing process, the Representatives have entered into an Information Sharing Protocol, of even date which sets out specific guidance with respect to the sharing and transfer of information by and between the Representatives and their respective agents.

In addition to information sharing between the Representatives, effective and consistent management of the Proceedings may also require cooperation and communication between the Tribunals.

This Protocol is therefore designed to set a framework for the coordination of the Proceedings, and to enable the Tribunals and Representatives to operate efficiently, expeditiously and effectively in the interest of all of the Debtors' creditors and other stakeholders, including the victims of the underlying fraud.

Terms

1. Purpose and Aims

1.1 The Representatives shall, to the extent appropriate having regard to their respective duties under applicable law, coordinate with each other and cooperate in all aspects of the Proceedings in order to meet the aims of this Protocol.

1.2 The aims of this Protocol are:

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- 1.2.1 Coordination - To promote international cooperation and the coordination of activities in the Proceedings.
- 1.2.2 Efficiency - To provide for the orderly, effective, expeditious and efficient administration of the Proceedings in order to reduce their cost and to maximize recovery for creditors.
- 1.2.3 Communication - To promote communication among Representatives; and to provide, to the extent desirable, for direct communication between the Tribunals.
- 1.2.4 Information and Data Sharing - To provide for the expeditious sharing of information and data between the Representatives in order to promote effective, efficient and fair administrations and to avoid duplication of effort and activities by the parties.
- 1.2.5 Assets - To promote coordination and cooperation between the Representatives in relation to the identification, preservation and realisation of assets and their fair distribution among all classes of creditors.
- 1.2.6 Comity - To maintain the independent jurisdiction, sovereignty, and authority of all Tribunals.

2. Notice

- 2.1 Notice of any meetings, applications and any relevant court hearings or statutory deadlines, and any other matters in which the relevant Representative has an interest, shall be provided by each Representative to the other Representative by email as far in advance as possible.

3. Right of Representatives to Appear

- 3.1 The Representatives where possible shall have the right to appear in all of the Proceedings, whether before a Tribunal or in statutory meetings convened pursuant to applicable law, provided however that appearing before a Tribunal shall not in itself subject a Representative to jurisdiction for any purpose other than any relief that Representative may be seeking from the relevant Tribunal.

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3.2 If a Representative cannot be present before a Tribunal, he shall be entitled, to the extent permitted by applicable law, to communicate in writing any observations to that Tribunal in advance of any order being made.

4. Communication and Information Sharing

4.1 To the extent appropriate having regard to their respective duties under applicable law, each Representative shall:

4.1.1 keep the other Representative apprised of its activities and of all relevant information and material developments in matters involving the Debtors and the Proceedings; and

4.1.2 share with the other Representative non-public information available to it regarding the Debtors, their pre-appointment activities and transactions, and their assets and liabilities.

4.2 The Representatives agree that each shall not (and shall direct that its respective agents and representatives shall not) provide any non-public information received from the other to any third party, unless the provision of such information is (i) agreed to by the other Representative; (ii) required by applicable law; or (iii) required by order of any Tribunal.

4.3 All communications between the Representatives (and their respective professionals, employees, agents, and representatives) are subject to, and do not waive, any applicable attorney-client, work-product, legal, professional, common interest or other privilege recognised under any applicable law. In that connection, the Representatives shall be entering into an agreement concerning confidential and/or privileged information of common interest.

5. Communication Between Tribunals

5.1 It is intended that the Guidelines Applicable to Court-to-Court Communication in Cross-Border Cases (the "**Guidelines**") attached as Schedule "A" hereto, shall be formally adopted by each Tribunal, whether in whole or in part and with or without modifications. Where there is any discrepancy between the Protocol and any guidelines which may eventually be adopted by the Tribunals, those guidelines shall prevail.

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6. Assets

- 6.1 To the extent appropriate having regard to their respective duties under applicable law, and to the extent that a Representative learns or believes that the other Representative may have a material interest in a particular asset, the Representatives shall coordinate and cooperate expeditiously with each other regarding the identification, preservation and realisation of that asset.
- 6.2 The Representatives shall endeavour to reach agreement expeditiously, on a case by case basis, as to which Representative is best placed to deal with any particular asset.
- 6.3 The Representatives shall provide assistance in respect of recovery of the identified assets, which may include enabling and/or confirmatory acts and instruments such as comfort letter, assignments and powers of attorney in favour of the Representative who is pursuing recovery of such assets.

7. Intercompany Claims

- 7.1 The Representatives shall cooperate and negotiate in good faith regarding any potential claims by either Debtor against the other Debtor. At the appropriate stage, the Representatives shall consider whether it is sensible to implement, subject to the approval of the Tribunals, a mechanism for the resolution of intercompany claims.

8. Law Enforcement Agencies

- 8.1 The Representatives recognise that there is a substantial public interest in the investigation of fraud and the effective prosecution of those responsible.
- 8.2 To the extent appropriate having regard to their respective duties under applicable law, the Representatives:
- 8.2.1 shall endeavour to coordinate with each other regarding the cooperation provided to law enforcement or other agencies (including, without limitation, the Department of Justice, the Securities and Exchange Commission, and SIPC in the United States, and the Serious Fraud Office, the Metropolitan Police Fraud Squad, the City of London Police and the Financial Services Authority in England); and

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8.2.2 take steps to ensure that evidence provided to law enforcement agencies is in a manner and form which assists those agencies and, in the case of agencies in the United States, does not include testimony obtained under powers of compulsion save where appropriate safeguards (which shall be mutually agreed) are put in place regarding such evidence.

9. Costs

9.1 Subject to any further agreement between the Representatives, each Representative's costs of performing its obligations under this Protocol (including the costs of its agents and representatives) shall be borne in the same manner as its other costs incurred in the relevant Proceeding.

10. Comity

10.1 The Representatives agree that each Tribunal is an independent, sovereign Tribunal, entitled to preserve its independent jurisdiction and authority with respect to matters before it.

10.2 Nothing in this Protocol is intended to interfere with the rules or ethical principles by which a Representative (including, in each case, a Representative's legal advisor) is bound, according to applicable national law and professional rules.

11. Amendment

11.1 The Protocol may be supplemented from time to time by the Representatives as circumstances require, for example detailing specific procedures for the exchange of information and data. Such supplements shall not require the approval of either Tribunal.

11.2 Subject to the agreement of the Representatives, and the entry of an order by each of the Tribunals, additional parties may be added to this Protocol.

12. Execution and Application


12.1 This Protocol shall be binding on, and inure to the benefit of, the Representatives' respective successors and assigns, including any liquidator subsequently appointed over MSIL.

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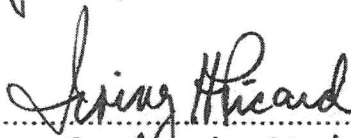
- 12.2 This Protocol shall not create any right for any person or entity that is not a party hereto.
- 12.3 Each Representative represents and warrants to the other that its execution, delivery, and performance of this Protocol is within its power and authority, except to the extent that Tribunal approval is required.
- 12.4 This Protocol may be signed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument.
- 12.5 This Protocol shall be deemed effective upon its approval by both Tribunals.

IN WITNESS WHEREOF the Representatives have caused this Protocol to be executed either individually or by their respective attorneys or representatives hereunto authorised.

Dated: 21st May 2009

Signed by 
.....
Joint provisioned liquidator of Madoff
Securities International Limited.

Dated: May 21, 2009

Signed by 
.....
Trustee for the liquidation of
Bernard L. Madoff Investment Securities LLC

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SCHEDULE A

The Guidelines Applicable to Court-to -Court Communication in Cross-Border Cases

(attached)

THE AMERICAN LAW INSTITUTE

in association with

THE INTERNATIONAL INSOLVENCY INSTITUTE

**Guidelines Applicable to Court-to-Court
Communications in Cross-Border Cases**

*As Adopted and Promulgated in Transnational Insolvency:
Principles of Cooperation Among the NAFTA Countries*

BY

THE AMERICAN LAW INSTITUTE
At Washington, D.C., May 16, 2000

And as Adopted by

THE INTERNATIONAL INSOLVENCY INSTITUTE
At New York, June 10, 2001



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The *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* were developed by The American Law Institute during and as part of its Transnational Insolvency Project and the use of the *Guidelines* in cross-border cases is specifically permitted and encouraged.

The text of the *Guidelines* is available in English and several other languages including Chinese, French, German, Italian, Japanese, Korean, Portuguese, Russian, Swedish, and Spanish on the website of the International Insolvency Institute at <http://www.iiiglobal.org/international/guidelines.html>.

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Foreword by the Director of The American Law Institute

In May of 2000 The American Law Institute gave its final approval to the work of the ALI's Transnational Insolvency Project. This consisted of the four volumes eventually published, after a period of delay required by the need to take into account a newly enacted Mexican Bankruptcy Code, in 2003 under the title of *Transnational Insolvency: Cooperation Among the NAFTA Countries*. These volumes included both the first phase of the project, separate Statements of the bankruptcy laws of Canada, Mexico, and the United States, and the project's culminating phase, a volume comprising *Principles of Cooperation Among the NAFTA Countries*. All reflected the joint input of teams of Reporters and Advisers from each of the three NAFTA countries and a fully transnational perspective. Published by Juris Publishing, Inc., they can be ordered on the ALI website (www.ali.org).

A byproduct of our work on the Principles volume, these *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* appeared originally as Appendix B of that volume and were approved by the ALI in 2000 along with the rest of the volume. But the *Guidelines* have played a vital and influential role apart from the *Principles*, having been widely translated and distributed, cited and applied by courts, and independently approved by both the International Insolvency Institute and the Insolvency Institute of Canada. Although they were initially developed in the context of a project arrived at improving cooperation among bankruptcy courts within the NAFTA countries, their acceptance by the IIC, whose members include leaders

of the insolvency bar from more than 40 countries, suggests a pertinence and applicability that extends far beyond the ambit of NAFTA. Indeed, there appears to be no reason to restrict the *Guidelines* to insolvency cases; they should prove useful whenever sensible and coherent standards for cooperation among courts involved in overlapping litigation are called for. See, e.g., American Law Institute, International Jurisdiction and Judgments Project § 12(e) (Tentative Draft No. 2, 2004).

The American Law Institute expresses its gratitude to the International Insolvency Institute for its continuing efforts to publicize the *Guidelines* and to make them more widely known to judges and lawyers around the world; to III Chair E. Bruce Leonard of Toronto, who as Canadian Co-Reporter for the Transnational Insolvency Project was the principal drafter of the *Guidelines* in English and has been primarily responsible for arranging and overseeing their translation into the various other languages in which they now appear; and to the translators themselves, whose work will make the *Guidelines* much more universally accessible. We hope that this greater availability, in these new English and bilingual editions, will help to foster better communication, and thus better understanding, among the diverse courts and legal systems throughout our increasingly globalized world.

LANCE LIEBMAN

Director

The American Law Institute

January 2004

Foreword by the Chair of the International Insolvency Institute

The International Insolvency Institute, a world-wide association of leading insolvency professionals, judges, academics, and regulators, is pleased to recommend the adoption and the application in cross-border and multinational cases of The American Law Institute's *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases*. The *Guidelines* were reviewed and studied by a Committee of the III and were unanimously approved by its membership at the III's Annual General Meeting and Conference in New York in June 2001.

Since their approval by the III, the *Guidelines* have been applied in several cross-border cases with considerable success in achieving the coordination that is so necessary to preserve values for all of the creditors that are involved in international cases. The III recommends without qualification that insolvency professionals and judges adopt the *Guidelines* at the earliest possible stage of a cross-border case so that they will be in place whenever there is a need for the courts involved to communicate with each other, e.g., whenever the actions of one court could impact on issues that are before the other court.

Although the *Guidelines* were developed in an insolvency context, it has been noted by litigation professionals and judges that the *Guidelines* would be equally valuable and constructive in any international case where two or more courts are involved. In fact, in multijurisdictional litigation, the positive effect of the *Guidelines* would be even greater in cases where several courts are involved. It

is important to appreciate that the *Guidelines* require that all domestic practices and procedures be complied with and that the *Guidelines* do not alter or affect the substantive rights of the parties or give any advantage to any party over any other party.

The International Insolvency Institute expresses appreciation to its members who have arranged for the translation of the *Guidelines* into French, German, Italian, Korean, Japanese, Chinese, Portuguese, Russian, and Swedish and extends its appreciation to The American Law Institute for the translation into Spanish. The III also expresses its appreciation to The American Law Institute, the American College of Bankruptcy, and the Ontario Superior Court of Justice Commercial List Committee for their kind and generous financial support in enabling the publication and dissemination of the *Guidelines* in bilingual versions in major countries around the world.

Readers who become aware of cases in which the *Guidelines* have been applied are highly encouraged to provide the details of those cases to the III (fax: 416-360-8877; e-mail: info@iiiglobal.org) so that everyone can benefit from the experience and positive results that flow from the adoption and application of the *Guidelines*. The continuing progress of the *Guidelines* and the cases in which the *Guidelines* have been applied will be maintained on the III's website at www.iiiglobal.org.

The III and all of its members are very pleased to have been a part of the development and success of the *Guidelines* and commend The American Law Institute for its vision in developing the *Guidelines* and in supporting

their worldwide circulation to insolvency professionals, judges, academics, and regulators. The use of the *Guidelines* in international cases will change international insolvencies and reorganizations for the better forever, and the insolvency community owes a considerable debt to The American Law Institute for the inspiration and vision that has made this possible.

E. BRUCE LEONARD

Chairman

The International Insolvency Institute

Toronto, Ontario

March 2004

Judicial Preface

We believe that the advantages of co-operation and co-ordination between Courts is clearly advantageous to all of the stakeholders who are involved in insolvency and reorganization cases that extend beyond the boundaries of one country. The benefit of communications between Courts in international proceedings has been recognized by the United Nations through the *Model Law on Cross-Border Insolvency* developed by the United Nations Commission on International Trade Law and approved by the General Assembly of the United Nations in 1997. The advantages of communications have also been recognized in the European Union Regulation on Insolvency Proceedings which became effective for the Member States of the European Union in 2002.

The *Guidelines for Court-to-Court Communications in Cross-Border Cases* were developed in the American Law Institute's Transnational Insolvency Project involving the NAFTA countries of Mexico, the United States and Canada. The *Guidelines* have been approved by the membership of the ALI and by the International Insolvency Institute whose membership covers over 40 countries from around the world. We appreciate that every country is unique and distinctive and that every country has its own proud legal traditions and concepts. The *Guidelines* are not intended to alter or change the domestic rules or procedures that are applicable in any country and are not intended to affect or curtail the substantive rights of any party in proceedings before the Courts. The *Guidelines* are intended to encourage and facilitate co-operation in international cases while observing all applicable rules and procedures of the Courts that are respectively involved.

The *Guidelines* may be modified to meet either the procedural law of the jurisdiction in question or the particular circumstances in individual cases so as to achieve the greatest level of co-operation possible between the Courts in dealing with a multinational insolvency or liquidation. The *Guidelines*, however, are not restricted to insolvency cases and may be of assistance in dealing with non-insolvency cases that involve more than one country. Several of us have already used the *Guidelines* in cross-border cases and would encourage stakeholders and counsel in international cases to consider the advantages that could be achieved in their cases from the application and implementation of the *Guidelines*.

Mr. Justice David Baragwanath
High Court of New Zealand
Auckland, New Zealand

Hon. Sidney B. Brooks
United States Bankruptcy Court
District of Colorado
Denver

Chief Justice Donald I. Brenner
Supreme Court of British Columbia
Vancouver

Hon. Charles G. Case, II
United States Bankruptcy Court
District of Arizona
Phoenix

Mr. Justice Miodrag Dordević
Supreme Court of Slovenia
Ljubljana

Hon. James L. Garrity, Jr.
United States Bankruptcy Court
Southern District of New York (Ret'd)
Shearman & Sterling
New York

Mr. Justice Paul R. Heath
High Court of New Zealand
Auckland, New Zealand

Chief Judge Burton R. Lifland
United States Bankruptcy Appellate
Panel for the Second Circuit
New York

Hon. George Paine II
United States Bankruptcy Court
District of Tennessee
Nashville

Mr. Justice Adolfo A.N. Rouillon
Court of Appeal
Rosario, Argentina

Mr. Justice Wisit Wisitsora – At
Business Reorganization Office
Government of Thailand
Bangkok

Mr. Justice J.M. Farley
Ontario Superior Court of Justice
Toronto

Hon. Allan L. Gropper
Southern District of New York
United States Bankruptcy Court
New York

Hon. Hyungdu Kim
Supreme Court of Korea
Seoul

Mr. Justice Gavin Lightman
Royal Courts of Justice
London

Hon. Chiyong Rim
District Court
Western District of Seoul
Seoul, Korea

Hon. Shinjiro Takagi
Supreme Court of Japan (Ret'd)
Industrial Revitalization Corporation of Japan
Tokyo

Mr. Justice R.H. Zulman
Supreme Court of Appeal of South Africa
Parklands

Guidelines

Applicable to Court-to-Court Communications in Cross-Border Cases

Introduction:

One of the most essential elements of cooperation in cross-border cases is communication among the administering authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

A Court intending to employ the Guidelines — in whole or part, with or without modifications — should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting

Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

Guideline 1

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

Guideline 2

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

Guideline 3

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

Guideline 4

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an autho-

rized Representative of the foreign Court on such terms as the Court considers appropriate.

Guideline 5

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

Guideline 6

Communications from a Court to another Court may take place by or through the Court:

- (a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;
- (b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affect-

ed parties in such manner as the Court considers appropriate;

- (c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means, in which case Guideline 7 should apply.

Guideline 7

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

- (a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;
- (b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;
- (c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both

Courts subject to such Directions as to confidentiality as the Courts may consider appropriate; and

- (d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

Guideline 8

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

- (a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;
- (b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;
- (c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official tran-

script prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate; and

- (d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

Guideline 9

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

- (a) Each Court should be able to simultaneously hear the proceedings in the other Court.
- (b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.

- (c) Submissions or applications by the representative of any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.
- (d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.
- (e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

Guideline 10

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.

Guideline 11

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

Guideline 12

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List that may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction (“Non-Resident Parties”). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

Guideline 13

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized

Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

Guideline 14

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

Guideline 15

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

Guideline 16

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as

may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

Guideline 17

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.

EXHIBIT B
INFORMATION PROTOCOL

INFORMATION SHARING PROTOCOL

Protocol for the exchange of information in relation to the Bernard Madoff Group of companies between agents of the Joint Provisional Liquidators and the SIPA Trustee

1. Background

- 1.1. Irving H. Picard has been appointed trustee ("Trustee") for the liquidation of Bernard L. Madoff Investments Securities LLC ("BLMIS") under the Securities Investor Protection Act ("SIPA"), pursuant to the application of the Securities Investor Protection Corporation ("SIPC"). FTI Consulting, Inc and its subsidiaries and affiliates (together "FTI") are assisting the Trustee in the liquidation of BLMIS.
- 1.2. Mark Richard Byers, Andrew Lawrence Hosking, and Stephen John Akers have been appointed the Joint Provisional Liquidators ("JPLs") of Madoff Securities International Limited (MSIL). Grant Thornton UK LLP ("GT") is assisting the JPLs in the provisional liquidation of MSIL.
- 1.3. The Trustee and the JPLs (collectively the "Representatives") have agreed that it is in their common interest to share information with each other relating to the affairs of BLMIS and MSIL.
- 1.4. The Representatives have agreed that their agents FTI and GT (together the "Investigators") should assist them by sharing information with each other on their behalf in accordance with this Protocol for the Exchange of Information in Relation to the Bernard Madoff Group of Companies Between Agents of the Joint Provisional Liquidators and the SIPA Trustee ("Protocol") and the Cross-Border Insolvency Protocol for the Bernard Madoff Group of Companies also entered into by the Representatives on this day.

2. Purpose and Aims

- 2.1. The purpose of the Protocol is to provide guidance with respect to the sharing and transferring of information by and between the Representatives and Investigators.
- 2.2. The provisions of this Protocol shall be interpreted consistently with the Cross-Border Insolvency Protocol for the Bernard Madoff Group of Companies and the Order dated 27 February 2009 of the High Court of Justice.

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3. Costs

3.1. The parties anticipate that the Investigators will incur costs in sharing information and complying with this Protocol. FTI's costs in relation to work performed under this protocol shall be borne in the same way as its other costs in assisting the Trustee with the BLMIS liquidation. Similarly, GT's costs shall be borne in the same way as its other costs in assisting the JPLs with the provisional liquidation of MSIL.

4. Information to be Communicated

4.1. The Trustee shall be responsible for determining which information may be provided by FTI to GT in accordance with applicable laws and regulations, on the understanding that following disclosure such information might be used by the GT and the JPLs in accordance with section 5 of this protocol. FTI shall share information with GT as directed by the Trustee.

4.2. The JPLs shall be responsible for determining which information may be provided by GT to FTI in accordance with applicable laws and regulations, on the understanding that following disclosure such information may be used by FTI and the Trustee in accordance with section 5 of this protocol. GT shall share information with FTI as directed by the JPLs.

4.3. Unless otherwise agreed between the Investigators, the Investigator receiving any information does not agree to take custody of, or to preserve, any original evidence provided.

4.4. The Representatives agree at this time that categories of information that may be freely communicated and transmitted between the Investigators and Representatives, unless objected to by either Representative, include any

4.4.1. organizational documents regarding MSIL;

4.4.2. bank statements;

4.4.3. accounting records;

4.4.4. wire transfers and/or records of funds transfers to, by, or on behalf of MSIL;

4.4.5. customer statements;

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- 4.4.6. communications to and/or from any investment advisor, broker, banker or referral source;
 - 4.4.7. communications with regulatory authorities;
 - 4.4.8. records of trades;
 - 4.4.9. communications between MSIL and BLMIS, or entities acting for or on their behalf;
 - 4.4.10. personnel files; and
 - 4.4.11. communications with any recipients of funds transferred by or on behalf of MSIL in the possession or under the control of either Representative, the provision of which is necessary for the purposes identified in paragraphs (a), (b), and (d) of the 27 February 2009 Order of the High Court, hereto attached.
- 4.5. It is expected that the information communicated will likely, though not necessarily, relate to one or more of the following categories:
- 4.5.1. The books and records or other physical documents held by BLMIS or MSIL and secured by FTI or GT;
 - 4.5.2. Electronic data held by BLMIS or MSIL and secured by FTI or GT;
 - 4.5.3. The work papers or equipment (including IT systems) of one of the Investigators;
 - 4.5.4. Discussions between one of the Investigators and current or former personnel of BLMIS or MSIL;
 - 4.5.5. Discussions between one of the Investigators and third parties such as bankers, counterparties or advisers;
 - 4.5.6. Formal interviews held under statutory powers;
 - 4.5.7. Information from other legal proceedings;
 - 4.5.8. Information provided by law enforcement agencies or regulators that the respective party is not forbidden from transmitting; and/or

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- 4.5.9. Publicly available information.
- 4.6. It is envisioned that the information transmitted will encompass data and information that is in, *inter alia*, electronic, hard copy, raw, written, and oral form.
- 4.7. Information may be provided by any appropriate means. This may include, but is not limited to, written or oral summaries, analyses and commentaries, charts, graphs, tables, copies of documents, transcripts, recordings, access to original evidence or attendance at interviews with third parties.
- 5. Use of Information Received & Confidentiality**
- 5.1. The information received by each Investigator from the other shall only be used for the proper purposes of the recipient in assisting the Trustee and the JPLs in their court-appointed roles. Each Investigator may use all information received from the other for any such purpose, subject to the provisions of Section 6.1.
- 5.2. No Representative or Investigator shall disclose any non-public information received from any other Representative or Investigator to third parties, other than agents of the Representatives, unless such information disclosure is (i) agreed to by each Representative, (ii) required by applicable law, or (iii) required by order of any Tribunal.
- 5.3. It is expressly acknowledged and agreed that GT shall establish "Chinese Wall" procedures, such that no employee or other representative of GT receiving information pursuant to this Protocol share such information with any employee or other representative of that division of Grant Thornton in its capacity as the auditor for SIPC, and such that no information received by the JPLs pursuant to the Protocol shall be shared with the relevant division of Grant Thornton which is the auditor of SIPC.
- 5.4. It is mutually understood that both the Trustee and JPLs are fully cooperating with law enforcement agencies in both the U.K. and U.S.
- 5.5. Nothing in this Protocol shall be deemed a waiver of any privilege, protection, or immunity with respect to communications between and among Representatives and Investigators, including their employees and agents. The Investigators shall treat communications between each other and with the Representatives, and their respective professionals, employees, agents, and representatives confidentially in accordance with the common interest privilege agreement of even date and shall not waive any attorney-

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client, work-product, legal advice, litigation, professional, common interest or other privileges recognised under any applicable law.

5.6. Information received pursuant to this Protocol shall be maintained in the same manner as other information retained by each party, but in all cases securely, and destroyed in accordance with each party's regular information and/or document destruction policy.

6. Procedures for the Communication of Compelled Information

6.1. Any information that is compelled, whether pursuant to court order, required by law, or otherwise, shall be considered Compelled Evidence. Compelled Evidence shall only be transmitted to another party pursuant to this Protocol with the consent of both Representatives. Any Compelled Evidence that is so transmitted shall be maintained securely and recorded in a log by both the sender and recipient of the information and labelled "Confidential: Not to be Disclosed." Each party shall designate a person responsible for logging and maintaining custody of Compelled Evidence, and notify the other parties of the designated individual's identity and contact information.

7. Amendment and Execution

7.1. Points of contact for the purposes of questions pursuant to this Protocol or amendments to the Protocol are as follows:

| | |
|--------------|---|
| For the JPLs | Stephen J. Akers Grant Thornton 30 Finsbury Square London EC2P 2YU |
|--------------|---|

| | |
|------------------|--|
| For the Trustee: | David J. Sheehan, Esq. John W. Moscow, Esq. Baker & Hostetler, LLP 45 Rockefeller Plaza, 11 th Fl. New York, NY 10111 |
|------------------|--|

7.2. This Protocol shall be binding on, and inure to the benefit of, the Representatives' and Investigators' respective successors and assigns, including any liquidator subsequently appointed over MSIL.

7.3. This Protocol shall not create any right for any person or entity that is not a party hereto.


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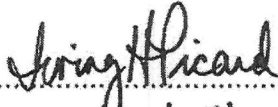
- 7.4. Each Representative represents and warrants to the other that its execution, delivery, and performance of this Protocol is within its power and authority, except to the extent that Tribunal approval is required.
- 7.5. This Protocol may be signed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument.
- 7.6. This Protocol shall be deemed effective upon its approval by both Representatives.

IN WITNESS WHEREOF the Representatives have caused this Protocol to be executed either individually or by their respective attorneys or representatives hereunto authorised.

Dated: 21st MAY 2009

Dated: May 21, 2009

Signed  by

Signed  by

JOINT PROVISIONAL
LIQUIDATOR OF
MADOFF SECURITIES
INTERNATIONAL LTD

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

EXHIBIT C
PROPOSED ORDER

Hearing Date and Time: June 9, 2009 at 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-1789 (BRL)

SIPA Liquidation

**ORDER PURSUANT TO SECTIONS 1526, 1527 AND 105(a) OF THE
BANKRUPTCY CODE APPROVING PROTOCOLS BY AND BETWEEN THE
TRUSTEE AND THE JOINT PROVISIONAL LIQUIDATORS OF MADOFF
SECURITIES INTERNATIONAL LIMITED**

Upon the motion (the "Motion")¹ of Irving H. Picard, Esq. (the "Trustee") as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (the "Debtor" or "BLMIS"), seeking entry of an order, pursuant to sections 1526, 1527 and 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., approving the protocols, by and among the Trustee, SIPC, and the Joint Provisional Liquidators of Madoff Securities International Limited, and it appearing that due and sufficient notice has been given to all parties in interest; and it further appearing the relief sought in the Motion is appropriate based upon the record of the hearing held before this Court to consider the Motion; and it further appearing that this Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and after due

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

deliberation; and sufficient cause appearing therefor; it is

ORDERED, that the Motion is granted in all respects; and it is further

ORDERED, that the Protocols are approved, and it is further

ORDERED, that the Trustee is authorized to take all actions necessary to effectuate the terms of the Protocols; and it is further

ORDERED, that the Trustee and the JPLs shall each comply with and carry out the terms of the Protocols.

Dated: New York, New York
June __, 2009

HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE

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

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

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

SIPA Liquidation

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2009, I served true copies of the **Notice of Motion and Motion for Entry of Order Pursuant to Sections 1526, 1527 and 105(a) of the Bankruptcy Code Approving Protocols By And Between The Trustee And The Joint Provisional Liquidators of Madoff Securities International Limited** upon the interested parties who receive electronic service through ECF and/or by placing true and correct copies thereof in sealed packages designated for regular U.S. Mail to those parties as set forth on the attached Schedule A.

I further hereby certify that on May 29, 2009, I served true copies of the **Notice of**

Motion and Motion for Entry of Order Pursuant to Sections 1526, 1527 and 105(a) of the Bankruptcy Code Approving Protocols By And Between The Trustee And The Joint Provisional Liquidators of Madoff Securities International Limited by emailing the interested parties true and correct copies via electronic transmission to the email addresses designated for delivery and/or by placing true and correct copies thereof in sealed packages designated for regular U.S. Mail to those parties as set forth below:

Internal Revenue Service
District Director
290 Broadway
New York, New York 10008

Internal Revenue Service
Centralized Insolvency Operation
Post Office Box 21126
Philadelphia, PA 19114

U.S. Department of Justice, Tax Division
Box 55
Ben Franklin Station
Washington, DC 20044

Securities Investor Protection Corporation

Kevin Bell – kbell@sipc.org
Josephine Wang – jwang@sipc.org

Securities and Exchange Commission

Alistaire Bambach – bambacha@sec.gov
Alexander Mircea Vasilescu – vasilescua@sec.gov
Terri Swanson – swansont@sec.gov
Israel E. Friedman – friedmani@sec.gov
Preethi Krishnamurthy – krishnamurthyp@sec.gov

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Lisa Baroni – lisa.baroni@usdoj.gov
Natalie Kuehler - natalie.kuehler@usdoj.gov

Counsel to the JPL

Eric L. Lewis – Eric.Lewis@baachrobinson.com

Dated: New York, New York
May 29, 2009

s/Dawn Larkin-Wallace
DAWN LARKIN-WALLACE