

**IN THE CIRCUIT COURT OF THE 17th JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

**CASE NUMBER: 12-034121 CA 07
Complex Litigation Unit**

**PHILIP J. VON KAHLE, as Conservator of P&S ASSOCIATES,
GENERAL PARTNERSHIP, and S&P ASSOCIATES,
GENERAL PARTNERSHIP, MARGARET J. SMITH, as
Managing General Partner of P&S ASSOCIATES, GENERAL
PARTNERSHIP, and S&P ASSOCIATES, GENERAL
PARTNERSHIP, a Florida Limited Partnership,**

Plaintiffs,

vs.

**JANET A. HOOKER CHARITABLE TRUST, a Charitable
Trust, et al.,**

Defendants.

**DEFENDANT, ERSICA P. GIANNA'S MOTION FOR SUMMARY JUDGMENT
ON THE THIRD AMENDED COMPLAINT**

COMES NOW, Defendant, Ersica P. Gianna, an individual and as Trustee ("Gianna"), by and through her undersigned counsel and, pursuant to Rule 1.510 of the Florida Rules of Civil Procedure, hereby respectfully moves this Honorable Court for an Order granting Defendant, Ersica P. Gianna's Motion For Summary Judgment On The Third Amended Complaint ("Gianna Motion"), in favor of Gianna against Plaintiffs, Phillip J. Von Kahle, as Conservator of P&S Associates, General Partnership, a Florida Limited Partnership ("P&S"), and S&P Associates, General Partnership, a Florida Limited Partnership ("S&P") (collectively "Plaintiffs"), and, in support thereof, states:

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A PROFESSIONAL ASSOCIATION

I. INTRODUCTION

1. On or about December 10, 2012, Plaintiffs filed a multi-count Third Amended Complaint ("TAC") against multiple parties, including Gianna, and Plaintiffs are now proceeding on their TAC. Gianna now seeks summary judgment against Plaintiff, S&P.

2. Plaintiffs assert that Gianna received improper distributions that were not made from the profits of P&S and S&P (collectively "Partnerships"), but were improperly and unlawfully made from the principal contributions of other Partners. As such, Plaintiffs allege that Gianna "reaped profits" from her investments in the Partnership in direct contravention of the plain terms of the S&P Partnership Agreement. Plaintiffs allege Gianna only invested in S&P [See TAC at Paragraph 7].

3. The causes of action relating to the Partnership Agreement with S&P are barred, as Plaintiffs failed to bring a lawsuit within the time required, under the applicable statutes of limitations for each cause of action. The TAC sets forth seven (7) counts against Gianna: Count I - Breach Of Statutory Duty (Negligence); Count II - Breach Of Florida Statutes § 620.8807; Count III - Breach Of Contract; Count IV - Unjust Enrichment; Count V - Money Had And Received; Count VI - Avoidance Of Fraudulent Transfers; and, Count VII - Breach Of Fiduciary Duty.

4. For the reasons recited herein, there are no issues of material fact, since S&P's causes of action were not brought within the time required by the applicable statutes of limitations. As such, the Gianna Motion should be granted, as to all causes of action brought against her by the Plaintiffs, as a matter of law.

II. FACTUAL BACKGROUND¹

5. Plaintiffs allege that the Partnerships were formed for the purpose of engaging in the business of investing [See TAC at Paragraph 36]. Partners invested in one of two investment vehicles, each of which were expected to yield stable consistent returns [See TAC at Paragraph 37]. Gianna is alleged to have invested money in S&P, one of the Partnerships [See TAC at Paragraph 7] and thus was a partner in the investment. There are no allegations by P&S against Gianna.

6. The Partnerships' investments and withdrawals were to be overseen by the Managing General Partners of the Partnerships, Michael D. Sullivan ("Sullivan") and Greg Powell ("Powell"), the "S" and "P" of the partnerships. [See TAC at Paragraph 39]. The Managing General Partners controlled how, when and where investments were made and the "the majority of those funds" were invested with the Bernard L. Madoff Investment Securities, LLC [See TAC at Paragraph 38].

7. Plaintiffs allege "that the former Managing General Partners breached their fiduciary duties of loyalty and care to the Partners and the Partnerships "by making" improper distributions to Gianna, among others, which distributions were "made from the principal contributions of other Partners", and not from the Partnerships' profits [See TAC at Paragraph 48].

8. Gianna received her first distribution from S&P of \$2,268.49 on April 19, 1993 [See November 13, 2012 correspondence from Margaret J. Smith ("Smith"), as Managing General Partner of S&P, with attached General Partner Statement- Cash Basis for Gianna, appended hereto as Exhibit "1". Gianna made her first capital contribution of \$100,000.00 to S&P on December 21,

¹ Gianna adopts and incorporates her filed Statement Of Material Facts, as required by the Rules Of The Court.

1992, and made her second and final contribution of \$95,000.00 to S&P on March 29, 1994. Gianna received her final distribution from S&P of \$4,864.35 on October 1, 2008 [See Exhibit "1" above, General Partner Statement - Cash Basis].

9. On or about January 16, 2009, Rice Pugatch Robinson & Schiller, P.A. was retained by the Partnerships, due to the fraud which was revealed following the arrest of Bernard L. Madoff ("Madoff"). On January 30, 2009, a meeting of the Partnerships took place to discuss the effect of the Madoff ponzi scheme on the Partnerships and to advise the partners that the Partnership was no longer conducting business but was in a "wind-down mode" and "wind down" was on the agenda for that meeting [See Affidavit Of Chad P. Pugatch, appended hereto as Exhibit "2"]. During this meeting, the Partners were advised that some Partners may be "net winners" and some may be "net losers" and, as such, clawbacks might take place.

10. On November 13, 2012, over four (4) years after Gianna's last distribution was received from S&P, and more than two (2) years after the Partnerships began the wind down process², Gianna received a demand letter from the new Managing Partner of the Partnerships, Smith [See copy of November 13, 2012 Smith demand letter and TAC, which has a copy of the demand letter appended thereto as Exhibit "E"]. As a reminder, this lawsuit was filed on December 10, 2012.

III. LEGAL STANDARD

11. Summary judgment is a procedure used to expedite litigation and to lower expenses

² Gianna adopts and incorporates the testimony in the Affidavit Of Chad P. Pugatch in support of Gianna Motion.

to the parties. *See Page v. Staley*, 226 So. 2d 129, 130 (Fla. 4th DCA 1969). When the basic facts of the case are clear and undisputed, and there is only a question of law to be determined, the court shall grant a summary judgment. *Duprey v. United States Automobile Association*, 254 So. 2d 57, 58 (Fla. 1st DCA 1971). "Entry of summary judgment is proper if the pleadings, depositions, answers to interrogatories, admissions, affidavits, and other materials as would be admissible in evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Ginsberg v. Northwest Medical Center, Inc.*, 14 So. 3d 1250 (Fla. 4th DCA 2009) (quoting Fla. R. Civ. P. 1.510(c)). "The moving party has the burden to show the absence of any material issue of fact and the court must draw every inference in favor of the nonmoving party." *Hollywood Towers Condo. v. Hampton*, 993 So. 2d 174, 176 (Fla. 4th DCA 2008).

12. Once the moving party has met its burden, the non-moving party must show evidence that would reveal a factual issue. Page 226, So. 2d at 131. Although the moving party faces a heavy burden, when the determination of a lawsuit is dependent upon written instruments of the parties, the question at issue is generally one of law and can be determined by the entry of summary judgment by the Court. *Kochan v. American Fire and Casualty Co.*, 200 So. 2d 213, 220 (Fla. 3d DCA 1967).

13. Gianna moves this court for the entry of summary judgment on all of the causes of action relating to the alleged improper distributions received by Gianna, pursuant to Fla.R.Civ.P. Rule 1.510, as all of Plaintiffs' claims asserted against her are time-barred. As such, no genuine

issue as to any material fact exists herein, and Gianna is entitled to the entry of a summary judgment against Plaintiff, as a matter of law.

IV. ARGUMENT

Statute Of Limitations Bars Count I and II For Statutory Negligence³

14. If an independent statutory cause of action exists, pursuant to §620.8807 of the Florida Statutes⁴, such action against Gianna is barred by the applicable statute of limitations. Counts I and II of the TAC purport to be statutory causes of action brought, pursuant to §620.8807, which requires partners to contribute to either of the partnerships “an amount equal to any excess of the charges over the credits in their capital account.” The causes of action which are brought in Counts I and II are “action[s] founded on a statutory liability”. As such, these statutory causes of action (if they even exist in Florida) are subject to a four (4) year statute of limitations. *See Fla. Stat. §95.11(3)(f)*. These claims are time barred, as all of the disbursements to Gianna were made more than four (4) years next prior to the filing of this action on December 10, 2012.

15. The delayed discovery doctrine does not apply with respect to statutory claims. *See Davis v. Monahan*, 832 So. 2d 708, 709-12 (Fla. 2002).

16. This cause of action, pursuant to Fla. Stat. §620.8807, may also be barred by the two (2) year statute of limitations set forth in Fla. Stat. §620.1509, which states that “an action under this

³ If the Court finds that an independent cause of action exists in Florida Statutes §620.8807, Counts I and II are based on the same statute and are duplicate counts.

⁴ Gianna adopts and incorporates herein those arguments raised in co- Defendants’ Motions To Dismiss which argue that there is no recognizable cause of action pursuant to § 620.8807

section is barred if it is not commenced within two years after the distribution.” Thus, if Plaintiffs claim Gianna “received a distribution knowing that the distribution to that partner or transferee was made in violation of s. 620.1508”, such a cause of action is barred by the applicable statute of limitations.

17. As there is no genuine issue of material fact existing, with regard to the dates of the disbursements to Gianna, all of which were made more than four(4) years next prior to the filing of the original Complaint, Plaintiffs’ claims in Counts I and II are time barred by the applicable statute of limitations.

A Cause Of Action Brought, Pursuant To Fla. Stat. §620.8807, Does Not Apply To Gianna

18. Also pursuant to Fla. Stat. § 620.1303, since Plaintiffs’ allegations are that the former Managing Partner of S&P acted improperly and not that Gianna took any actions which were improper while she was a partner, there can be no liability as a limited partner in P&S for limited partnership obligations. *See* Fla. Stat. §620.1303.

Count III: There Is No Material Evidence Which Supports Plaintiffs’ Breach Of Contract And Cause Of Action, As Same Is Also Barred By Statute Of Limitations

No Evidence Supports Breach Of Contract By Gianna

19. Count III for Breach Of Contract fails, as a matter of law, as there is no material evidence which supports the mere allegation that Gianna breached the terms of the Partnership Agreement. In order to be successful on a breach of contract claim, Plaintiffs must prove: 1) the existence of a valid and enforceable contract; 2) a material breach of that contract; and, 3) damages resulting directly from that breach. *Knowles v. CLI, Corp.*, 346 So. 2d 1042, 1043 (Fla. 1st DCA

1977); *Rollins, Inc. v. Butland*, 951 So. 2d 860, 876 (Fla. 2d DCA 2006). The only material breach alleged by Plaintiffs was by the former Managing Partner, Michael Sullivan. There is no material breach by Gianna which comports with the requirement “for acts and/or omissions involving intentional wrongdoing, fraud, and breaches of fiduciary duties of care and loyalty”, as set forth in Section 14.03 of the S&P Partnership Agreement. Since there is no record evidence of a material the breach of S&P Partnership Agreement by Gianna, Plaintiffs’ Count III for Breach Of Contract fails, as a matter of law.

Count III For Breach Of Contract Is Barred By Statute Of Limitations

20. Even if this Court were to find that Plaintiffs have submitted material evidence that Gianna breached the S&P Partnership Agreement, Count III fails, as a matter of law. The first distribution to Gianna by S&P was made on April 19, 1993, which was more than nineteen (19) years before the initial Complaint was filed on December 10, 2012. A breach of contract claim is subject to a five (5) year statute of limitations. *See* Fla. Stat. §95.11(2)(b). Since all of the distributions to Gianna by S&P going back to the first distribution made can’t be considered by this Court, the question is how far back can the Court go? The answer is five (5) years prior to December 10, 2012. The total of the disbursements made within five (5) years next prior to the filing of the TAC is only approximately \$25,000.00 in total, far less than Gianna’s investment in S&P of \$195,000.00, from the date the Complaint was filed do not total more than Gianna ‘s investment in the amount of \$95,000.00. Thus, for the purposes of Count III, Gianna is a “net loser”, and Count III fails, as a matter of law.

The Statute Of Limitations Bars Counts IV, V, VI And VII

21. As discussed above and without dispute, the original Complaint was filed on December 10, 2012 and the distributions to Gianna at issue were made more than four (4) years prior to that date. Since the applicable statute of limitations is four (4) years for Plaintiff's causes of action within the TAC, all of these causes of action in Counts IV, V, VI and VII are all barred, as a matter of law.

Count IV For Unjust Enrichment Is Barred By Statute Of Limitations

22. Plaintiffs allege that Gianna voluntarily accepted improper distributions, and that it would be inequitable and unjust for Gianna to retain them. Plaintiffs contend that the Partnerships conferred a benefit on Gianna by making distributions to her from the capital contributions of other Partners. Pursuant to Fla. Stat. §95.11(3)(k), a claim for unjust enrichment is subject to a four (4) year statute of limitations. Therefore, the statute of limitations on Plaintiffs' claim for "unjust enrichment" is four (4) years. *Swafford v. Schweitzer*, 906 So. 2d 1194, 1195 (Fla. 4th DCA 2005); *See also* Fla. Stat. §95.11(3)(k). An unjust enrichment claim accrues at the time the defendant receives the alleged improper enrichment. Gianna received the last of its allegedly improper distributions on October 1, 2008, more than four (4) years before the filing of the original Complaint on December 10, 2008; that is the latest that the S&P Partnership could have conferred a benefit on Gianna. Accordingly, P&S's claim for unjust enrichment against Gianna was required to be filed no later than October 1, 2012. Since the original Complaint was filed on December 10, 2012, and the distributions at issue were made more than four (4) years before that date, Plaintiffs' Count IV

for unjust enrichment is time barred by the applicable statute of limitations.

23. Plaintiff also cannot proceed on a cause of action for unjust enrichment against Gianna, pursuant to Section 14.03 of the S&P Partnership Agreement, which sets forth that partners can only be liable “for acts and/or omissions involving intentional wrongdoing, fraud, and breaches of fiduciary duties of care and loyalty.” Plaintiff’s claim for unjust enrichment is not consistent with the terms set forth and provisions in Section 14.03 of the S&P Partnership Agreement.

Count V For Money Had And Received Is Barred By Statute of Limitations

24. Plaintiffs allege that the S&P Partnership conferred a benefit on Gianna by making distributions from the capital contributions of other Partners rather than from the Partnerships’ profits. Plaintiffs allege that Gianna voluntarily accepted those distributions and that it would be inequitable and unjust for Gianna to retain same. Pursuant to Fla. Stat. §95.11(3)(k), a claim for Money Had And Received is subject to a four (4) year statute of limitations. Plaintiffs’ claim for “Money Had And Received” is barred by a four (4) year statute of limitations. *See* Fla. Stat. §95.11(3). Since Gianna received the last of her allegedly improper distributions on October 1, 2008, more than four (4) years next prior to the original date of the filing of the Complaint on December 10, 2012, that is the latest date that the S&P’s Partnership could have conferred a benefit on Gianna. Accordingly, S&P’s claim for “Money Had And Received” was required to be filed no later than October 1, 2012. S&P’s claim for “Money Had And Received” was filed after the expiration of the applicable four (4) year statute of limitations period on December 10, 2012, and, as a result, S&P’s claim for Money Had And Received is time barred. As such, Count V is barred

by the applicable statute of limitations.

25. Plaintiffs also cannot proceed on a claim for Money Had And Received, pursuant to Section 14.03 of the S& P Partnership Agreement, which sets forth that Partners can only be liable “for acts and/or omissions involving intentional wrongdoing, fraud, and breaches of fiduciary duties of care and loyalty.” A claim for Money Had And Received is not consistent with the terms set forth in Section 14.03 of the Partnership Agreement.

Count VI For Avoidance Of Fraudulent Transfers Is Barred By Statute Of Limitations

26. Count VI For Avoidance Of Fraudulent Transfers Is Barred By Statute Of Limitations
Count VI is a claim For Avoidance Of Fraudulent Transfers Pursuant To § 726.105(1)(a) Of The Florida Statutes. Plaintiffs allege that the distributions received by Gianna from S&P are fraudulent transfers. Plaintiff, S&P, alleges the S&P Partnership didn’t receive reasonably equivalent value in exchange for the distributions it made to Gianna. Plaintiffs contend that these transfers were made to Gianna, with the actual intent to hinder, delay or defraud certain other S&P Partners, who were allegedly creditors of the S&P Partnership, and that these transfers may be avoided under Fla. Stat. §726.105(1)(a). Plaintiffs have provided no record evidence to support any such intent by Gianna.

27. Even if any such intent by Gianna existed and could be proved, this cause of action would still be time barred by the applicable statute of limitations. Pursuant to Fla. Stat. §726.110, a claim for fraudulent transfer is subject to a four (4) year statute of limitations. A cause of action with respect to the avoidance of a fraudulent transfer or obligation under Fla. Stat. §726.105(1)(a) is extinguished, unless it is brought within four (4) years after the transfer was made or the obligation

was incurred or, if later, within one (1) year after the transfer or obligation was or could reasonably have been discovered by the claimant. *See Fla. Stat. §726.110(1).*

28. Since the last of the alleged fraudulent transfers to Gianna by S&P occurred on October 1, 2008, any cause of action with respect to these transfers must have been brought by October 1, 2012. Even considering the one year savings clause, this cause of action is time barred by the statute of limitations. The one year savings clause provides that even when a cause of action for fraudulent transfer is brought after the four year limitation period, it must still be brought within one year after the transfer or obligation was or could reasonably have been discovered. As described in the TAC, the S& P Partnership alleges it ultimately lost money, due to the defalcation of Madoff and the fraud committed by he and others, and these facts were well known to S&P on or before January, 2009, as attested to by Chad P. Pugatch and as discussed at the January 30, 2009 Meeting Of The Partnerships. A copy of the January 30, 2009 Transcript Of The Meeting Of The Partnerships is attached as Exhibit "3".

29. Since the original Complaint was filed on December 10, 2012 and the distributions at issue made to Gianna were made more than four years next prior to that date, Count VI is time barred by the applicable four year statute of limitations. In the alternative, Plaintiffs knew, or should have known and reasonably discovered, that the alleged improper disbursements by S&P were made at least as early as January, 2009, when the Madoff ponzi scheme was uncovered, and the Partnership notified the Partners of such through the Partnerships' attorney, Mr. Pugatch. *See Fla. Stat. §726.110.* As such, S&P's cause of action for the Avoidance Of Fraudulent Transfers by S&P is

time barred by the applicable statute of limitations period.

30. As there are no genuine issues as to any material fact in dispute, as to Plaintiffs' Count VI, Gianna is entitled to the entry of a summary judgment, as a matter of law, on Count VI against S&P.

Count VII For Breach Of Fiduciary Duty Is Barred By Statute Of Limitations

31. Pursuant to Fla. Stat. §95.11(3)(p), a claim for breach of fiduciary duty is subject to a four year statute of limitations. Since the Complaint was filed on December 10, 2012 and the last of the distributions at issue to Gianna was made more than four years before that date, October 1, 2008, Count VII is barred by the applicable statute of limitations.

32. Since Gianna received all of the alleged improper distributions from S&P more than four years next prior to the filing of the original Complaint, on December 10, 2012, all of the Plaintiffs' claims within Counts IV, V, VI and VII against Gianna are time barred, as a matter of law.

Gianna's Testimony In Support Of Gianna's Motion

33. Gianna's Affidavit in support of Gianna's Motion is being filed separately, under Notice of even date.

V. CONCLUSION

34. There is no genuine issue of material fact which remains in dispute in this case as to Gianna. The Parties do not contest the dates and amounts of distributions made to Gianna. Plaintiffs have put forth no record evidence of any intent to defraud or of any intentional wrongdoing by Gianna. Even if the Honorable Court was to find sufficient record evidence to support the basic

elements of the various causes of action, brought by Plaintiff in the TAC, all causes of action against Gianna are time barred by the applicable statutes of limitations. There are also no savings clauses which allow any of Plaintiff's causes of action brought in the TAC against Gianna to survive.

WHEREFORE, Defendant, Ersica P. Gianna, respectfully requests that this Honorable Court enter an Order Granting Defendant, Ersica P. Gianna's Motion For Summary Judgment On The Third Amended Complaint, in her favor, as to all claims brought against her by Plaintiffs, including S&P Associates, General Partnership, a Florida Limited Partnership; enter a Final Judgment in her favor; and, for this Court to award costs and such other relief as this Court deems just and appropriate.

I HEREBY CERTIFY that on March 10, 2014, I electronically filed the foregoing document with the Clerk of the Court and I also certify that the foregoing document is being served this day on all counsel of record in the manner specified, either via the Florida Courts E-Filing Portal or in some other authorized manner for those counsel or parties who are not authorized to receive electronic filings.

Respectfully submitted,

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By: /s/ Gary J. Rotella, Esquire
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November 13, 2012

Ersica Gianna
3101 N.E. 42nd Court
#102
Ft. Lauderdale, FL 33308

Re: **S&P Associates, General Partnership**
Case No.: 12-24051

Dear Sir or Madam:

Please be advised that on August 29, 2012, Michael D. Sullivan resigned and Margaret J. Smith was appointed as Managing General Partner of S&P Associates, General Partnership ("S&P" or the "Partnership"). Pursuant to ¶8.02 of the Amended and Restated Partnership Agreement dated December 1994, "the Managing General Partner [is] authorized and empowered to carry out and implement any and all purposes of the Partnership" including but not limited to (d) "to take any actions and to incur any expense on behalf of the Partnership that may be necessary or advisable in connection with the conduct of the Partnership's affairs".

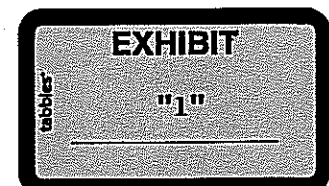
Review of the Partnership books and records as of December 31, 2008 indicates you received funds in excess of contributions totaling **\$159,339.71**. Enclosed for your reference as **Exhibit A** is the detail of the funds contributed and funds disbursed from your capital account from December 1992 through December 2008. The immediate return of funds totaling **\$159,339.71** to S&P is hereby requested.

To encourage a speedy and effective resolution of this matter prior to the commencement of litigation against you, we will accept **\$143,405.74** in full satisfaction of the amount claimed, if paid within 10 calendar days of the date of this letter. This represents a 10% discount of the amount which the Partnership may sue you for if this matter is not resolved as set forth above.

Accordingly, we demand payment of **\$143,405.74** in immediately available U.S. funds within 10 calendar days of the date of this letter, payable to:

Berger Singerman, LLP Trust Account
Attn: Etan Mark, Esq.
1450 Brickell Avenue
Suite 1900
Miami, FL 33131

In the absence of a timely, conforming payment, Berger Singerman, on behalf of S&P, will take appropriate action, including the filing of a Complaint seeking recovery of all sums due, plus interest and costs of collection.

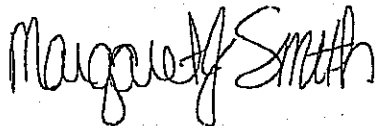


November 13, 2012

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Be assured that we want to treat everyone fairly and to minimize the cost of responding to this demand letter for return of funds. Should you wish to do so, we are willing to schedule a call or meeting with you to discuss this matter. However, because time is of the essence, and to avoid litigation, we must receive either payment, a request for a timely call or meeting or an explanation (including copies of all cancelled checks, wire transfer advices and relevant agreements) of why you do not owe the sum demanded within 10 calendar days of this letter. If we elect to forbear from the commencement of litigation, entry into an acceptable tolling agreement may be required. To discuss this matter further, you may contact me via email at msmith@glassratner.com or by phone at 305-358-6092.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret J. Smith". The signature is fluid and cursive, with the first name "Margaret" and last name "Smith" clearly distinguishable.

Margaret J. Smith

msmith@glassratner.com

S & P Associates, General Partnership

General Partner Statement - Cash Basis

Bank	Account	Transferor/ Transferee	Statement Clearing Date	Check #	General Partner	Funds Received	Funds Disbursed	Net Funds Received (Disbursed)
S.O.A	8865		12/21/92	110	Gianna, Ersica	\$ 100,000.00	\$ -	
S.O.A	8865		04/19/93	1008	Gianna, Ersica	-	2,288.49	
S.O.A	8865		07/26/93	1018	Gianna, Ersica	-	3,057.16	
S.O.A	8865		10/19/93	1033	Gianna, Ersica	-	3,125.83	
S.O.A	8865		01/12/94	1045	Gianna, Ersica	-	3,088.88	
S.O.A	8865		03/25/94		Gianna, Ersica	95,000.00	-	
S.O.A	8865		04/11/94	1079	Gianna, Ersica	-	2,887.09	
S.O.A	8865		07/12/94	1105	Gianna, Ersica	-	5,883.65	
S.O.A	8865		10/12/94	1133	Gianna, Ersica	-	5,933.75	
S.O.A	8865		01/06/95	1161	Gianna, Ersica	-	5,947.18	
S.O.A	8865		04/03/95	1191	Gianna, Ersica	-	5,781.95	
S.O.A	8865		07/03/95	1314	Gianna, Ersica	-	5,857.32	
S.O.A	8865		10/04/95	1352	Gianna, Ersica	-	5,974.74	
S.O.A	8865		01/03/96	1913	Gianna, Ersica	-	5,904.89	
S.O.A	8865		04/02/96	1953	Gianna, Ersica	-	5,918.18	
S.O.A	8865		07/05/96	1993	Gianna, Ersica	-	5,942.93	
S.O.A	8865		10/01/96	2035	Gianna, Ersica	-	5,987.47	
S.O.A	8865		12/31/96	2082	Gianna, Ersica	-	6,020.74	
S.O.A	8865		04/02/97	2124	Gianna, Ersica	-	5,927.50	
S.O.A	8865		07/03/97	2171	Gianna, Ersica	-	6,100.77	
S.O.A	8865		10/03/97	2224	Gianna, Ersica	-	6,314.48	
S.O.A	8865		01/08/98	2278	Gianna, Ersica	-	6,288.82	
S.O.A	8865		04/02/98	2327	Gianna, Ersica	-	6,127.82	
S.O.A	8865		07/02/98	2390	Gianna, Ersica	-	6,270.30	
ST	8865		10/02/98	3031	Gianna, Ersica	-	6,410.72	
ST	8865		01/05/99	3082	Gianna, Ersica	-	6,345.49	
ST	8865		04/02/99	3168	Gianna, Ersica	-	6,233.86	
ST	8865		07/02/99	3241	Gianna, Ersica	-	6,406.86	
ST	8865		10/14/99	3334	Gianna, Ersica	-	6,530.24	
ST	8865		01/04/00	3422	Gianna, Ersica	-	6,464.88	
ST	8865		04/03/00	3518	Gianna, Ersica	-	6,379.88	
ST	8865		07/03/00	3623	Gianna, Ersica	-	6,457.84	
ST	8865		10/05/00	3720	Gianna, Ersica	-	6,485.99	
ST	8865		01/04/01	3808	Gianna, Ersica	-	6,395.27	
ST	8865		04/03/01	3890	Gianna, Ersica	-	6,198.87	
ST	8865		07/03/01	3996	Gianna, Ersica	-	6,267.24	
ST	8865		10/03/01	4093	Gianna, Ersica	-	6,272.63	
ST	8865		01/03/02	4182	Gianna, Ersica	-	6,218.49	
ST	8865		04/03/02	4277	Gianna, Ersica	-	6,138.02	
ST	8865		07/03/02	4378	Gianna, Ersica	-	6,033.08	
ST	8865		10/03/02	4450	Gianna, Ersica	-	6,074.21	
ST	8865		01/06/03	4530	Gianna, Ersica	-	6,110.28	
ST	8865		04/03/03	4616	Gianna, Ersica	-	5,986.35	
ST	8865		07/07/03	4687	Gianna, Ersica	-	5,913.87	
ST	8865		10/03/03	4749	Gianna, Ersica	-	5,853.19	
ST	8865		01/31/04	4803	Gianna, Ersica	-	5,837.97	
BB&T	0379		04/05/04	5008	Gianna, Ersica	-	5,758.84	
BB&T	0379		07/08/04	5058	Gianna, Ersica	-	5,667.22	
BB&T	0379		10/05/04	5114	Gianna, Ersica	-	5,652.25	
BB&T	0379		01/03/05	5154	Gianna, Ersica	-	5,801.71	
BB&T	0379		04/08/05	5204	Gianna, Ersica	-	5,509.52	
BB&T	0379		07/06/05	5289	Gianna, Ersica	-	5,448.85	
BB&T	0379		10/04/05	5315	Gianna, Ersica	-	5,368.58	
BB&T	0379		01/09/06	5356	Gianna, Ersica	-	5,280.28	
BB&T	0379		04/04/06	5407	Gianna, Ersica	-	5,293.11	
BB&T	0379		07/03/06	5468	Gianna, Ersica	-	5,282.35	
BB&T	0379		10/04/06	5500	Gianna, Ersica	-	5,238.19	
BB&T	0379		01/02/07	5550	Gianna, Ersica	-	5,224.21	
BB&T	0379		04/02/07	5609	Gianna, Ersica	-	5,186.52	
BB&T	0379		07/03/07	5651	Gianna, Ersica	-	5,136.37	
BB&T	0379		10/02/07	5715	Gianna, Ersica	-	5,110.55	
BB&T	0379		01/03/08	5788	Gianna, Ersica	-	5,046.78	
BB&T	0379		04/02/08	5838	Gianna, Ersica	-	4,997.11	
BB&T	0379		07/02/08	5898	Gianna, Ersica	-	4,914.01	
BB&T	0379		10/01/08	5947	Gianna, Ersica	-	4,864.35	
Gianna, Ersica Total						\$ 195,000.00	\$ 354,339.71	\$ (159,339.71)

DRAFT
Privileged and Confidential

AFFIDAVIT OF CHAD PUGATCH

STATE OF FLORIDA)
) ss:
COUNTY OF BROWARD)

I, CHAD PUGATCH, being first duly sworn, deposes and states as follows:


1. I have personal knowledge of the matters set forth in this affidavit.
2. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts stated herein.
3. Prior to January 2009, my firm, Rice Pugatch Robinson & Schiller, P.A. was retained by the S&P Associates, General Partnership and the P&S Associates, General Partnership (the "Partnerships").
4. On January 16, 2009, a Memorandum titled "Notice of Meeting" with an agenda for a meeting to take place on Friday, January 30, 2009, along with additional documents regarding the Bernard Madoff Ponzi scheme, was provided to the partners in the Partnerships. Attached as Exhibit "A" is a true and correct copy of the documents (totaling 23 pages) which have been kept by me in the regular and ordinary course of my business.
5. On January 30, 2009, I, as counsel for the Partnerships, attended the partners meeting (the "Meeting").
6. An audio tape recording (the "Recording") was made in conjunction with the Meeting by a firm we hired to provide a call in link for out of town partners to participate in the Meeting.
7. The Recording was made at the time of the Meeting.
8. I have a copy of this Recording and this Recording is an accurate representation of the matters that were discussed at the Meeting.



9. I have kept this Recording, in the ordinary and regular course of my business on behalf of the Partnerships, who were my clients at the time of the Recording.

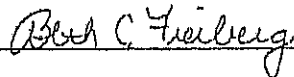
10. The Recording has been kept in mp3 format as part of the file my law firm has maintained for the matters I handled for the Partnerships and was burned to a CD under my supervision by my staff.

FURTHER AFFIANT SAYETH NAUGHT.


CHAD PUGATCH

STATE OF FLORIDA)
) ss:
COUNTY OF BROWARD)

SWORN TO (OR AFFIRMED) AND SUBSCRIBED before me on this 12th day of February, 2014 by CHAD PUGATCH, who ☒ is personally known to me or ☐ who has produced _____ as identification.


Print name: Beth C. Freiberg

(Seal) Notary Public, State of Florida

My Commission Expires: _____



RICE PUGATCH ROBINSON & SCHILLER, P.A.

101 N.E. THIRD AVENUE, SUITE 1800
FT. LAUDERDALE, FLORIDA 33301
TELEPHONE: (954) 462-8000
TELEPHONE: (305) 379-3121
FACSIMILE: (954) 462-4300
FACSIMILE: (305) 379-4119

www.rprslaw.com

MEMORANDUM

TO: All Partners of P&S Associates, General Partnership
FROM: Chad Pugatch, Esq.
DATE: January 16, 2009
RE: P&S Associates, General Partnership -- Notice of Meeting

Please be advised that my firm has been retained by P&S Associates, General Partnership (P&S) with regard to the unfortunate circumstances created by the arrest of Bernard Madoff and ultimate receivership and bankruptcy filing for Bernard L. Madoff Investment Securities, LLC.

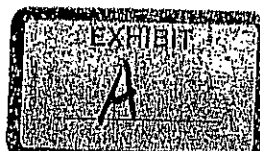
As a result of the above filings and resulting freeze of assets it is imperative that P&S take appropriate actions to protect its interests and therefore all partners' interests. Some of you are aware of our firm's involvement by virtue of initial communication from Michael Sullivan. In fact we have already been receiving requests for information and have done our best to communicate as these requests have arisen. Nevertheless, it is in the best interest of the Partnership and all partners that the Partnership conduct a meeting of all partners where all of these issues and the course of conduct of the Partnership can be determined giving full attention to the input of all partners.

Pursuant to paragraph 8.04 of the Partnership Agreement, a meeting has therefore been scheduled and will take place on Friday, January 30, 2009 commencing at 2:00 p.m. eastern time at Westin Cypress Creek Hotel, 400 Corporate Drive, Fort Lauderdale, Florida 33334.

At this meeting the managing partners and professionals retained by the Partnership will be prepared to answer questions and deal with all the significant pending issues resulting from the Madoff catastrophe and will attempt to establish based upon the wishes of the partners and appropriate vote the course of conduct of the Partnership in protecting its interests and the interests of the partners.

It is anticipated that certain actions to be undertaken may require a vote. Any partner may attend in person or may attend by participating in a dial in conference call. Appropriate information will be established as to the method for dialing into this call once technical arrangements have been finalized with appropriate audio and conferencing facilities through the hotel. A subsequent notice will provide this information to you. Partners participating in person or by telephone will be entitled to speak and vote.

To the extent any partner is unable to participate either in person or by telephone the provisions of the Partnership Agreement provide in paragraph 8.04 that any partner may execute a signed, written consent to representation by another partner or representative. For your convenience we are



MEMORANDUM

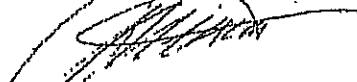
January 16, 2009

Page 2

attaching an appropriate form to be utilized if you decide to be represented by another partner or professional. This form should be executed, notarized and returned to me prior to the date of the meeting. The Partnership cannot allow for participation or voting other than by partners or authorized representatives.

Should you have any questions concerning the above please feel free to call upon me and I will attempt as best I can to clarify any of these matters. Please also be patient as to requests for information which have been made in advance of this meeting as the best method of disseminating answers to all questions is to have them answered for the benefit of all partners at the meeting.

Yours very truly,



Chad P. Pugatch, Esq.

CPP:be

J:\WPdocs\4370 Sullivan S&P\Memos\PS Partnership Memo 1-16-09.doc

AGENDA FOR PARTNERS' MEETING - S&P ASSOCIATES, P&S ASSOCIATES, SPJ INVESTMENTS, LTD. INCLUDING MEMBERS OF GUARDIAN ANGEL TRUST, LLC

ATTORNEY/CLIENT PRIVILEGE/WORK PRODUCT

I. INTRODUCTION

This meeting is open to Partners of S&P Associates, P&S Associates, SPJ Investments, LTD as well as members of Guardian Angel Trust, LLC and/or their authorized representatives. It is not open to the public or the press. This meeting is confidential and may include discussion of attorney/client privileged matters. It is not the intention of the Partnerships to waive any such confidentiality or privilege by the unknown presence of unauthorized individuals. PLEASE respect the privacy of this meeting and your Partners.

We have established the following agenda of items to be discussed at the Partners' meeting called pursuant to the notice of January 16, 2009. The purpose of this meeting is first and foremost to provide information to the Partners as to what has transpired since the arrest of Bernard Madoff (Madoff) and subsequent receivership and insolvency proceeding for Bernard L. Madoff Investment Securities, LLC (Madoff Securities). It is also the purpose of the meeting to commence the process of determination by the Partners as to how the Partnerships will react to this crisis and to determine the future course of action of the Partnerships.

You must first come to the realization that to some extent you are all in this together. These are general partnerships and each and every one of you have or will suffer losses due to the unfortunate circumstances which have transpired. You all have potential joint and several liability with regard to the Partnerships as well. The Managing Partners and their families stand alongside you in this regard. They have invested and suffered losses just as you have. They have been working full time since this crisis developed in order to protect the interests of the Partnerships and consequently to protect the interest of each individual Partner. With that in mind please respect the process. We will do our best to get everyone's questions answered and give everyone a thorough opportunity to speak and discuss the matters relevant to the Partnerships.

While we know everyone needs information and we will attempt to answer all relevant and appropriate questions it must be understood that we are, including the professionals retained to represent the Partnerships, still new to the situation and there is an ongoing learning curve as to the facts and legal principles applicable to the facts.

PLEASE BE PATIENT. To the extent we cannot provide you with answers (or satisfactory answers) we will endeavor to do so in future meetings or by future communications. It is unlikely we will conduct any actual voting at this meeting. We have determined that it would be more appropriate, fair and accurate to conduct such voting by subsequent written

ballot in order to allow each Partner to properly consider the issues and to assure proper tabulation of ballots in accordance with each Partner's percentage interest.

Again, after discussion of the Agenda items we will allow adequate time for questions and discussion.

II. INTRODUCTION OF PROFESSIONALS AND ROLE OF PROFESSIONALS

III. BACKGROUND - HOW HAVE WE GOTTEN HERE

A) The Madoff Scandal Evolves

B) The Madoff Securities Insolvency Proceedings

IV. AGENDA ITEMS (Please note we may deviate in order if appropriate)

A) Current Status of Partnerships

B) Filing of Claims

1) Partnerships

2) Individual Rights

C) Deadlines



D) Tax Issues Including Potential for Amending Returns

*What are actions of
the P/S affect what of
partner can do?*

E) The Insolvency Proceedings

1) Monitoring

2) Deadlines and Hearings

3) Defensive Measures which May Become Necessary

a) Claim Objections

b) Avoidance Actions ("Clawback")

4) Affirmative Claims Against Third Parties

5) Prospective Recovery

F) The \$800,000.00 Repayment to P&S Associates

1) Risk of Avoidance

2) Who has Rights in Funds

G) Future Operations of the Partnerships

1) Management

2) Costs and Professional Fees

3) Wind Down

H) Future Meetings and Communications

I) General Questions and Discussion

Attorney Contact Information

Insolvency Counsel

Rice Pugatch Robinson & Schiller P.A.

Chad P. Pugatch, Esq. (cpugatch@rprslaw.com)

Kenneth B. Robinson, Esq. (krobinson@rprslaw.com)

Travis L. Vaughan, Esq. (tvaughan@rprslaw.com)

101 NE 3rd Ave, Ste 1800

Fort Lauderdale, FL 33301

Telephone: (954) 462-8000

Facsimile: (954) 462-4300

For more information please visit our website at www.rprslaw.com.

Securities Counsel

Sallah & Cox, LLC

James D. Sallah, Esq. (jds@sallahcox.com)

Jeffrey Cox, Esq. (jcox@sallahcox.com)

2101 NW Corporate Blvd Ste 218

Boca Raton, Florida 33431

Telephone: (561)989-9080

Facsimile: (561)989-9020

For more information please visit our website at www.sallahcox.com

Timeline and Dates:

Summary of Events

- I. On December 11, 2008 the SEC filed a complaint against Bernard L. Madoff Investment Securities, LLC in US District Court for the Southern district of NY, the same day the case was referred to the Bankruptcy Court for the Southern District of NY. [DE # 1]
 - a. Lee S. Richards is Appointed as Receiver: (presently to recover international possessions of Madoff Entities)
- II. On December 15, 2008 the Distinct Judge found SIPC protections necessary for Madoff Entities.
 - a. The Securities and Investor Protection Corporation is a private corporation which most brokerages must belong to, much like the FDIC, to insure securities investments, and is governed by the Securities Investor Protection Act. The goal of SIPC is to return the actual customer securities and cash to investors when possible, and to advance money to customers when there are insufficient securities or funds held by the debtor to cover responsibilities to customers. However, there are limits to coverage.
 - b. Irving Picard is appointed SPIC Trustee and supersedes Receiver
- III. On December 23, 2008, the Bankruptcy Court Approved the Trustee's Notice of procedures and claims forms. [See Exhibits A-E]
- IV. On January 2, 2009, Claims Forms/Info Mailed Out.
- V. On January 12, 2009, Bankruptcy Court approved Trustee's request for authority to subpoena documents and examine witnesses.
- VI. On January 21, 2009, Trustee filed his motion to extend time to assume or reject leases. (hearing set for February 4, 2009).
- VII. On January 29, 2008 Bankruptcy Court approved stipulation of Trustee with JP Morgan and Bank of New York Mellon for the Transfer or ~\$534,900,000.00 from accounts held in the Debtor's Name

Important Deadlines/Dates:

January 12, 2009	Deadline for open Broker Claims
February 20, 2009 at 10:00 am	341 Meeting of Creditors will be held
March 4, 2009 (January 2 + 60days)	Deadline for customer claims to be <i>received</i> and retain greatest SIPA protections
July 2, 2009 (January 2, + 6 months)	Claims Bar Date: customer claims and creditor Claims must be <i>received</i> by this date for allowance

**** Deadlines are when the Trustee must *receive* claims.**

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adversary Proceeding

No. 08-01789-BRL

**NOTICE TO CUSTOMERS AND CREDITORS OF BERNARD L. MADOFF
INVESTMENT SECURITIES LLC AND TO ALL OTHER PARTIES IN INTEREST**

COMMENCEMENT OF LIQUIDATION PROCEEDING

NOTICE IS HEREBY GIVEN that on December 15, 2008, the Honorable Louis A. Stanton of the United States District Court for the Southern District of New York, entered an Order granting the application of the Securities Investor Protection Corporation ("SIPC") for issuance of a Protective Decree adjudicating that the customers of Bernard L. Madoff Investment Securities LLC (the "Debtor"), are in need of the protection afforded by the Securities Investor Protection Act of 1970, 15 U.S.C. §§ 78aaa *et seq.* ("SIPA"). Irving H. Picard, Esq. ("Trustee") was appointed Trustee for the liquidation of the business of the Debtor, and Baker & Hostetler LLP was appointed as counsel to the Trustee. Customers of the Debtor who wish to avail themselves of the protection afforded to them under SIPA are required to file their claims with the Trustee within sixty (60) days after the date of this Notice. Customers may file their claims up to six months after the date of this Notice; however, the filing of claims after the sixty (60) day period but within the six month period may result in less protection for the customer. Such claims should be filed with the Trustee at Irving



H. Picard, Esq., Trustee for Bernard L. Madoff Investment Securities LLC, Claims Processing Center, 2100 McKinney Ave., Suite 800, Dallas, TX 75201. Customer claims will be deemed filed only when received by the Trustee.

Forms for the filing of customers' claims are being mailed to customers of the Debtor as their name and addresses appear on the Debtor's books and records. Customers who do not receive such forms within seven (7) days from the date of this Notice may obtain them by writing to the Trustee at the address shown above.

Claims by broker-dealers for the completion of open contractual commitments must be filed with the Trustee at the above address within thirty (30) calendar days after December 11, 2008, that is January 12, 2009, as provided by 17 C.F.R. 300.303. Broker-dealer claims will be deemed to be filed only when received by the Trustee. Claim forms may be obtained by writing to the Trustee at the address shown above.

All other creditors of the Debtor must file formal proofs of claim with the Trustee at the address shown above within six (6) months after the date of this Notice. All such claims will be deemed filed only when received by the Trustee.

No claim of any kind will be allowed unless received by the trustee within six (6) months after the date of this Notice.

AUTOMATIC STAY OF ACTIONS AGAINST THE DEBTOR

NOTICE IS HEREBY GIVEN that as a result of the issuance of the Protective Decree, certain acts and proceedings against the Debtor and its property are stayed as provided in 11 U.S.C. § 362 and by order of the United States District Court for the Southern District of New York entered on December 15, 2008 by the Honorable Louis A. Stanton.

MEETING OF CREDITORS

NOTICE IS HEREBY GIVEN that the first meeting of customers and creditors will be held on February 20, 2009, at 10:00 a.m., at the Auditorium at the United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004, at which time and place customers and creditors may attend, examine the Debtor, and transact such other business as may properly come before said meeting.

HEARING ON DISINTERESTEDNESS OF TRUSTEE AND COUNSEL TO THE TRUSTEE

NOTICE IS HEREBY GIVEN that on February 4, 2009, at 10:00 a.m., at Courtroom 601 of the United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004, has been set as the time and place for the hearing before the Honorable Burton R. Lifland, United States Bankruptcy Judge, of objections, if any, to the retention in office of Irving H. Picard, Esq., as Trustee, and Baker & Hostetler LLP, as counsel to the Trustee, upon the ground that they are not qualified or not disinterested as provided in SIPA § 78ase(b)(6). Objections, if any, must be filed not less than five (5) days prior to such hearing, with a copy to be served on counsel for the Trustee at Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, New York 10111, attn: Douglas E. Spelfogel, Esq., so to be received no fewer than five (5) days before the hearing.

NOTICE IS HEREBY GIVEN that copies of this Notice, the letter to customers, the customer claim form, and instructions as well as the SIPC brochure may be found on SIPC's

website at www.sipc.org under Proceedings/Liquidations and on the Trustee's website, www.madofftrustee.com. From time to time in the future, other updated information and notices concerning this proceeding may also be posted at SIPC's and/or the Trustee's website.

Dated: January 2, 2009
New York, New York

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

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008

TO ALL CUSTOMERS OF BERNARD L. MADOFF INVESTMENT SECURITIES LLC:

Enclosed are the following documents concerning the liquidation of the business of Bernard L. Madoff Investment Securities LLC (the "Debtor");

1. A Notice;
2. A Customer Claim Form with Instructions; and
3. A brochure entitled "How SIPC Protects You."

You are urged to read the enclosed documents carefully. They explain the steps you must take to protect any rights and claims you may have in this liquidation proceeding.

The Customer Claim form should be filled out by you and mailed to Irving H. Picard, Esq., Trustee for the Liquidation of the Business of Bernard L. Madoff Investment Securities LLC at: Irving H. Picard, Esq., Trustee for Bernard L. Madoff Investment Securities LLC, Claims Processing Center, 2100 McKinney Ave., Suite 800, Dallas, TX 75201. A return envelope for the completed Customer Claim form is enclosed. Please make a copy of the completed Customer Claim form for your own records.

Your Customer Claim form will not be deemed to be filed until received by the Trustee. It is strongly recommended your claim be mailed certified mail, return receipt requested. Your return receipt will be the only document you will receive that shows your claim has been received by the Trustee.

If, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received. It is also important that you provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of any cash amounts and any securities given to the Debtor from as far back as you have documentation. You should also provide all documentation or information regarding any withdrawals you have ever made or payments received from the Debtor.

While your claim is being processed, you may be requested to file additional information or documents with the Trustee to support the validity of your claim.

It is your responsibility to report accurately all securities positions and money balances in connection with your account with the Debtor. A false claim or the retention of property to which

502180-105



you are not entitled may make you liable for damages and criminal penalties. If you cannot precisely calculate the amount of your claim, however, you may file an estimated claim.

One of the purposes of the liquidation is to return securities and cash due to customers as promptly as practicable. In that connection, funds of the Securities Investor Protection Corporation may be utilized to pay valid customer claims relating to securities and cash up to a maximum amount of \$500,000.00 for each customer, including up to \$100,000.00 for claims for cash, as provided in the Securities Investor Protection Act of 1970, as amended ("SIPA"). The enclosed brochure provides information concerning the protection afforded by SIPA.

Customers' telephone inquiries delay the liquidation. The time of personnel who would otherwise be at work to speed the satisfaction of customers' claims is required for such calls.

Your cooperation in promptly returning the completed Customer Claim form with all supporting documentation to the Trustee is in your best interest as it will help speed the administration of the liquidation proceeding.

Dated: January 2, 2009
New York, New York

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

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008

READ CAREFULLY

INSTRUCTIONS FOR COMPLETING CUSTOMER CLAIM FORM

These instructions are to help you complete the customer claim form enclosed. If Bernard L. Madoff Investment Securities LLC ("Broker") owes you cash or securities and you wish to claim them, the trustee must receive your claim on or before the date specified on the claim form. An improperly completed claim form will not be processed but will be returned to you and, consequently, will cause a delay in the satisfaction of your claim.

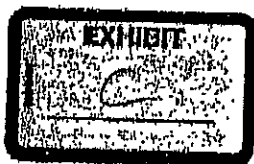
Item 1 is to be completed if on the date shown, the Broker owed you cash or if you owed the Broker cash.

If the Broker owes money to you, please indicate the amount in the space provided [Item 1a]. If you owe the Broker money, please so indicate in the space provided [Item 1b]. If the Broker owes you securities and you wish to receive those securities without deduction, then you must enclose your check for the amount shown in Item 1c payable to "Irving H. Picard, Esq., Trustee for the Broker." Payments not enclosed with this claim form will not be accepted by the trustee for purposes of determining what securities are to be distributed to you.

Item 2 deals with securities (including any options) held for you. If the Broker is holding securities for you or has failed to deliver securities to you, please indicate by checking the appropriate box under Item 2 and set forth in detail the information required with respect to the date of the transaction, the name of the security and the number of shares or face value of bonds. With respect to options, set forth number and type of options, the exercise price and expiration date, e.g., 3 options [call] or [put] Xerox at 70 2x October 81. PLEASE DO NOT CLAIM ANY SECURITIES YOU ALREADY HAVE IN YOUR POSSESSION.

It would expedite satisfaction of your claim if you enclose copies of:

1. Your last account statement;



2. An explanation of any differences between cash balances and securities on your last account statement and cash balances and securities you claim;
3. Purchase and sale confirmations and canceled checks covering the items referred to on your customer claim form; and
4. Proper documentation can speed the review, allowance and satisfaction of your claim and shorten the time required to deliver your securities and cash to you. Please enclose, if possible, copies of your last account statement and purchase or sale confirmations and checks which relate to the securities or cash you claim, and any other documentation, such as correspondence, which you believe will be of assistance in processing your claim. In particular, you should provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of your deposits of cash or securities with the Debtor from as far back as you have documentation. You should also provide all documentation or information regarding any withdrawals you have ever made or payments received from the Debtor.
5. Any other documentation which may assist the processing of your claim, such as correspondence, receipts, etc. In particular, if, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received.

Items 3 through 9 must each be marked and details supplied where appropriate.

A claim form must be filed for each account.

When To File

There are two deadlines for filing customer claims. One is set by the bankruptcy court for customer claims and one is set by the law for all claims.

The bankruptcy court has set March 4, 2009 as the final day for filing customer claims. If your claim is received by the Trustee after March 4, 2009 but on or before July 2, 2009, your claim is subject to delayed processing and to being satisfied on terms less favorable to you.

The law governing this proceeding absolutely bars the allowance of any claim, including a customer claim, not actually received by the trustee on or before July 2, 2009. Neither the Trustee nor SIPC has authority to grant extensions of time for filing of claims, regardless of the reason. If your claim is received even one day late, it will be disallowed.

Please file well in advance so that there will be time to re-file if, for instance, your claim is lost in the mail.

Where To File

The completed and signed claim form, together with supporting documents should be mailed promptly in the enclosed envelope to:

Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201

***** PLEASE SEND YOUR CLAIM FORM BY CERTIFIED MAIL - ***
RETURN RECEIPT REQUESTED**

Your claim is not filed until received by the Trustee. If the Trustee does not receive your claim, although timely mailed, you could lose all your rights against the Broker. Your return receipt will be the only document you will receive that shows your claim has been received by the Trustee.

**THIS INSTRUCTION SHEET IS FOR YOUR FILE - DO NOT RETURN
YOU SHOULD RETAIN A COPY OF THE COMPLETED CLAIM FORM FOR
YOUR RECORDS.**

CUSTOMER CLAIM

Claim Number _____

Date Received _____

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008

(Please print or type)

Name of Customer: _____
Mailing Address: _____
City: _____ State: _____ Zip: _____
Account No.: _____
Taxpayer I.D. Number (Social Security No.): _____

NOTE: BEFORE COMPLETING THIS CLAIM FORM, BE SURE TO READ CAREFULLY THE ACCOMPANYING INSTRUCTION SHEET. A SEPARATE CLAIM FORM SHOULD BE FILED FOR EACH ACCOUNT AND, TO RECEIVE THE FULL PROTECTION AFFORDED UNDER SIPA, ALL CUSTOMER CLAIMS MUST BE RECEIVED BY THE TRUSTEE ON OR BEFORE March 4, 2009. CLAIMS RECEIVED AFTER THAT DATE, BUT ON OR BEFORE July 2, 2009, WILL BE SUBJECT TO DELAYED PROCESSING AND TO BEING SATISFIED ON TERMS LESS FAVORABLE TO THE CLAIMANT. PLEASE SEND YOUR CLAIM FORM BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED.

1. Claim for money balances as of December 11, 2008:

- a. The Broker owes me a Credit (Cr.) Balance of \$ _____
- b. I owe the Broker a Debit (Dr.) Balance of \$ _____
- c. If you wish to repay the Debit Balance,
please insert the amount you wish to repay and
attach a check payable to "Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC."
If you wish to make a payment, it must be enclosed
with this claim form. \$ _____
- d. If balance is zero, insert "None." _____

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2. Claim for securities as of December 11, 2008:

PLEASE DO NOT CLAIM ANY SECURITIES YOU HAVE IN YOUR POSSESSION.

	<u>YES</u>	<u>NO</u>
a. The Broker owes me securities	_____	_____
b. I owe the Broker securities	_____	_____
c. If yes to either, please list below:		

Date of Transaction (trade date)	Name of Security	Number of Shares or Face Amount of Bonds	
		The Broker Owes Me (Long)	I Owe the Broker (Short)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Proper documentation can speed the review, allowance and satisfaction of your claim and shorten the time required to deliver your securities and cash to you. Please enclose, if possible, copies of your last account statement and purchase or sale confirmations and checks which relate to the securities or cash you claim, and any other documentation, such as correspondence, which you believe will be of assistance in processing your claim. In particular, you should provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of your deposits of cash or securities with the Debtor from as far back as you have documentation. You should also provide all documentation or information regarding any withdrawals you have ever made or payments received from the Debtor.

Please explain any differences between the securities or cash claimed and the cash balance and securities positions on your last account statement. If, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please be sure to provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received.

PLEASE CHECK THE APPROPRIATE ANSWER FOR ITEMS 3 THROUGH 9.

NOTE: IF "YES" IS MARKED ON ANY ITEM, PROVIDE A DETAILED EXPLANATION ON A SIGNED ATTACHMENT. IF SUFFICIENT DETAILS ARE NOT PROVIDED, THIS CLAIM FORM WILL BE RETURNED FOR YOUR COMPLETION.

	<u>YES</u>	<u>NO</u>
3. Has there been any change in your account since December 11, 2008? If so, please explain.	_____	_____
4. Are you or were you a director, officer, partner, shareholder, lender to or capital contributor of the broker?	_____	_____
5. Are or were you a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the broker?	_____	_____
6. Are you related to, or do you have any business venture with, any of the persons specified in "4" above, or any employee or other person associated in any way with the broker? If so, give name(s)	_____	_____
7. Is this claim being filed by or on behalf of a broker or dealer or a bank? If so, provide documentation with respect to each public customer on whose behalf you are claiming.	_____	_____
8. Have you ever given any discretionary authority to any person to execute securities transactions with or through the broker on your behalf? Give names, addresses and phone numbers.	_____	_____
9. Have you or any member of your family ever filed a claim under the Securities Investor Protection Act of 1970? If so, give name of that broker.	_____	_____

Please list the full name and address of anyone assisting you in the preparation of this claim form: _____

If you cannot compute the amount of your claim, you may file an estimated claim. In that case, please indicate your claim is an estimated claim.

IT IS A VIOLATION OF FEDERAL LAW TO FILE A FRAUDULENT CLAIM. CONVICTION CAN RESULT IN A FINE OF NOT MORE THAN \$50,000 OR IMPRISONMENT FOR NOT MORE THAN FIVE YEARS OR BOTH.

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

Date _____ Signature _____
Date _____ Signature _____

(If ownership of the account is shared, all must sign above. Give each owner's name, address, phone number, and extent of ownership on a signed separate sheet. If other than a personal account, e.g., corporate, trustee, custodian, etc., also state your capacity and authority. Please supply the trust agreement or other proof of authority.)

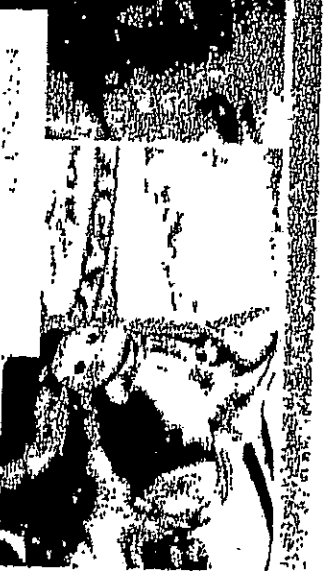
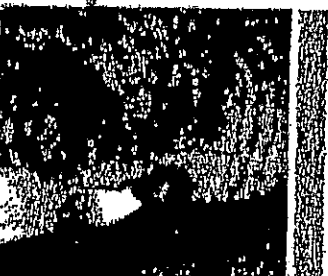
**This customer claim form must be completed and mailed promptly,
together with supporting documentation, etc. to:**

Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201

SIPC

Securities Investor Protection Corporation
 175 15th Street, N.W., Suite 900
 Washington, D.C. 20005-2215
 Tel: 202/371-6000 Fax: 202/371-5728
 Email: ask@sipc.org

SIPC



Brokerage firms that experience serious financial difficulties and may be shut down overnight with are called "liquidated," provisionally. The great news is that such liquidations do not happen every day. Thanks to the combined efforts of securities regulators, the U.S. Securities and Exchange Commission and state securities regulators, and some industry self-regulatory organizations like NASD and stock exchanges, to safeguard firm customers' assets, even in the United States. Even when a brokerage firm encounters financial difficulty, it usually has all of its assets owned to its customers, and can effectively transfer those assets to another broker-dealer without a liquidation proceeding.

However, a small handful of brokerage firms do encounter more severe financial difficulties, including customer assets that may be missing due to theft. These are the instances where the Securities Investor Protection Corporation (SIPC) steps in to protect or replace customer cash and securities, within certain limits set by law. SIPC was created in 1970 by Congress under the Securities Investor Protection Act (SIPPA) to protect the interests of investors and to help restore confidence in the integrity of the American securities markets. Nearly all brokerage firms registered with the U.S. Securities and Exchange Commission are required by law to be members of SIPC.

You can find SIPC on the Web at <http://www.sipc.org>.





The brokerage firm about any discrepancy between your records and those of the firm. If you have not already done so and your brokerage firm is starting a liquidation proceeding, make sure to carefully review your account statements in the way that is described here.

2. Make sure the trustee in the liquidation proceeding has your correct address. Have you moved to a different residence recently? Are your transaction documents not arriving in the mail? The trustee will mail a claim form to every customer at the address listed in the brokerage firm's records. If the brokerage firm records relied upon by a trustee aren't up to date, you may not receive a claim form, and that could leave you at a serious disadvantage in the liquidation proceeding. If you don't get a notification from the trustee in a week or two after the liquidation proceeding is announced, write to go to the SIPC Web site (<http://www.sipc.org>), find the information about your firm, and then contact the trustee as directed until your current contact information. You may also write to the SIPC Web site (<http://www.sipc.org>) with the "Feedback/Ask a Question" button.

3. You will get a claim form if the claim form is a "proof of loss" and then return it to the trustee in a week. Make sure that you fill out the form fully and make a copy for your records. Send the copy to the trustee and any necessary documents - not a "proof of loss" but the claim form by certified mail. You can prove the trust is returned later than from the SIPC Web site (<http://www.sipc.org>) and the trustee will be notified. If the trustee is not satisfied with the information you provide, you may be asked to provide more information. If the trustee is not satisfied with the information you provide, you may be asked to provide more information. If the trustee is not satisfied with the information you provide, you may be asked to provide more information.

1. I don't get a claim form. What should I do?

Go to SIPC's Web site at <http://www.sipc.org>. Shortly after a liquidation proceeding starts, SIPC will post a copy of the claim form on its Web site. While you cannot file a claim electronically, you can print out the claim form or the Web site and send it in. You also can consult the SIPC Web site to find the address to use to write to the trustee and request a claim form.

I think I was a victim of fraud. My broker convinced me to buy securities that went down sharply. Can SIPC return the amount of my initial investment?

No. SIPC returns the current value of your eligible holdings at a brokerage firm. If your securities have gone down in value, that is just part of the normal risk involved in being an investor. On the other hand, if your securities have gone up in value since you purchased them, SIPC will endeavor to return those securities to you at their current value. You may have a "general creditor claim" for your market losses, but that is not something that falls within the scope of SIPC. Funds from SIPC cannot be used to pay damage claims based on fraud.

How long will it take for me to get control of my account again?

Each liquidation proceeding is different. In some instances, a trustee has been able to transfer accounts in as little as one to three weeks. However, if the records of the defunct brokerage firm are in disarray, or if for any other reason it is not possible to transfer your

account to a financially healthy brokerage firm, the process may take more time. You will sit down on the delays by filing your claim promptly, correctly and with all required documentation.

After the liquidation proceeding involving my "old" brokerage firm started, I received a notice that my account was transferred to another brokerage firm. Does that mean I don't have to bother with the claim form?

No. You should still complete the claim form anyway and return it to the trustee. There are a number of things which might go wrong with a transfer of your assets to the new brokerage firm. Your account may be rejected by the new firm, or returned to the trustee for some other reason. If anything does go wrong with the transfer of your account, the claim form will be the only way you will be able to receive your assets. Fill out the claim form and return it even if you have been told your account has been transferred.

I don't understand how to fill in the claim form. Where can I get help?

You can find a step-by-step guide to filling out your claim form on the SIPC Web site at <http://www.sipc.org>. Keep in mind that your claim form cannot be filed electronically. However, you can use the "SIPC Claim Form Online Decoder" to fill out your form. If you do so, you must still print out and mail the completed form and all required attachments to the trustee. Remember, your claim form is not considered to be filed only when it is received in mail by the trustee in the mail. Make sure to copy the front and back of your claim form before it is received by the trustee. The copies by certified mail after return to the trustee. Be sure to check the "SIPC" box on the back of your claim form.

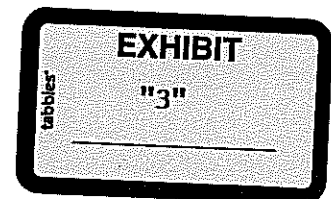
Certified Copy

In the Matter Of:
SECURITIES INVESTOR VS. MADOFF INVESTMENT

08-01789-BRL

MEETING

January 30, 2009



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800.211.DEPO (3376)
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