



December 6, 2010

**From: Counsel for Irving Picard, Trustee, BLMIS Liquidation**

**Re: Bernard L. Madoff Investment Securities LLC (BLMIS)  
Bankr. S.D.N.Y., No. 08-01789 (BRL)**

Our records indicate that you are among the Bernard L. Madoff Investment Securities LLC (“BLMIS”) customers who received more money from BLMIS than they deposited.

The Court-appointed Trustee for the liquidation of BLMIS, Irving Picard, through his counsel, Baker & Hostetler LLP, is commencing litigation to recover these excess amounts, which were transferred by BLMIS to customers like you during the six years prior to December 11, 2008. Because there was virtually no trading or purchases of securities by BLMIS for the customer accounts, the amounts withdrawn in excess of deposits were, in fact, funds deposited by other BLMIS customers. When recovered, these funds will be added directly to the Customer Fund, which has been assembled for the benefit of defrauded BLMIS customers with allowed claims.

Therefore, as part of these ongoing recovery efforts, we are serving you with a legal complaint, called an “Avoidance Action” lawsuit. The law requires that such complaints be filed on or before the second anniversary of the commencement of the BLMIS liquidation proceeding.

For step-by-step instructions on how to respond to the complaint, please review the Litigation Case Management Procedures for Avoidance Actions, a copy of which is enclosed. It is also available on the Trustee’s website at [www.madofftrustee.com](http://www.madofftrustee.com). These steps are designed to facilitate the evaluation and administration of your case and encourage resolution through discussion, negotiation and mediation, instead of litigation. We expect that many of you will consult with legal counsel, but the Procedures do allow you to appear on your own, without an attorney, or through a representative other than a lawyer.

**As the Trustee has stated on numerous occasions, his goal remains to negotiate, not litigate.** If at all possible, the Trustee wants to resolve this matter with you out of

court, in a way that is appropriate for your personal financial situation. If you work within the established framework and resolution is agreed upon, the Trustee will dismiss the suit against you.

**We urge you to respond promptly. If the procedures for responding to the complaint are not followed, the Avoidance Action lawsuit will move forward.** If you take no action and do not respond to the complaint, the Bankruptcy Court could enter a default judgment against you. A default judgment would be made with no input from you regarding your personal situation and no recognition of your current financial circumstances. If the Trustee does not hear from you, a default judgment is his only option.

If, on the other hand, you contact the Trustee, he will consider your circumstances, financial and otherwise, when determining whether to continue the lawsuit. The Trustee realizes that some of the persons sued may not be able to return, without undue hardship, all or even a portion of the excess funds which they received from BLMIS. **To address these situations, the Trustee is continuing the BLMIS Hardship Program to include complaint recipients who are currently experiencing financial hardship or who may be placed in a hardship position as a result of an Avoidance Action.** If you believe that you qualify for the Hardship Program, it is imperative that you review the steps – posted on [www.madofftrustee.com](http://www.madofftrustee.com) – and apply promptly for relief. Please call 1-800-735-3428 to reach assistance through the Hardship Program Hotline or email [hardshipprogram@bakerlaw.com](mailto:hardshipprogram@bakerlaw.com) with any questions you may have.

We have also provided an executive summary of the Avoidance Action Procedures to highlight key points and deadlines. If you have further questions or need assistance after reviewing the procedures below, please call 1-800-735-3428 to reach the Avoidance Action Help Line from 8 a.m. to 10 p.m. EST Mondays through Fridays and 10 a.m. to 6 p.m. EST on Saturdays.

### **Summary: BLMIS Avoidance Action Procedures**

#### **Responding to the complaint:**

1. You must respond to the complaint within 60 days from the date of the summons. Upon request, the Trustee may grant you extensions of time to respond.
2. If you agree to enter mediation, you will not need to respond to the complaint while mediation is ongoing. A motion to dismiss the Avoidance Action will be referred to mediation, unless you and the Trustee concurrently ask for an immediate court date.
3. Once one of the actions outlined in steps one or two has been taken, an initial case conference – either in person or by telephone – with representative(s) of the Trustee will be scheduled.
4. If you believe that you qualify for the Hardship Program, you should still respond to the Trustee promptly, within the deadlines outlined above. Again, please review the enclosed materials and call the Hardship Program Hotline at 1-800-735-3428 with questions about eligibility for the Program or visit the Trustee's website at [www.madofftrustee.com](http://www.madofftrustee.com) where forms and further information are available.

**Mediation:**

1. If the Trustee does not dismiss the complaint against you, or you and the Trustee are unable to reach a mutually agreeable settlement promptly, the Trustee will make every effort to resolve the lawsuit through mediation instead of in Court.
2. The Avoidance Actions will be referred to mandatory mediation, either before or after responding to the complaint. Complaint recipients and the Trustee will be able to choose a mediator from a list of mediators maintained by the Bankruptcy Court.
3. Position statements (no more than 20 double-spaced pages in 12-point type, exclusive of exhibits and schedules) must be submitted 10 days prior to mediation.
4. Mediations must be concluded within 120 days of mediator selection.
5. Mediator fees and expenses in matters involving less than \$20 million will be paid by the Trustee.

**Bankruptcy Court Pleadings and Related Discovery:**

1. If you do not believe the complaint against you can be resolved through mediation, you should refer to Bankruptcy Court Superseding General Order M-399 (available on the Bankruptcy Court's website located at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov) or on the Trustee's website ([www.madofftrustee.com](http://www.madofftrustee.com)) for instructions on filing of pleadings.
2. If you wish to act for yourself or through a representative other than a lawyer, you should carefully review the procedures in General Order M-399 regarding court appearances and the ability to file pleadings via email or, if unable to file electronically, through notification of actions and submission of materials via U.S. Mail.
3. Unless otherwise agreed by the parties, discovery requests – whether by you or your attorney – must be made within 60 days of the initial case conference or within 180 days of the initial complaint filing, whichever is later.
4. Unless otherwise agreed by the parties, all discovery should be completed within 210 days of the initial case conference, absent an order of the Court showing good cause for further extension or a separate agreement with the Trustee regarding discovery.
5. Given the anticipated volume of discovery requests, the Trustee reserves the right to produce summary reports or provide electronic or other access to underlying documentation to you and/or your attorney. (Access to materials containing non-public personal and financial information will be limited to complaint recipients and their legal counsel.)
6. Parties seeking depositions or interrogatories should consult the detailed Avoidance Action Procedures ([www.madofftrustee.com](http://www.madofftrustee.com)) for limits on availability of the Trustee's financial professionals and on the length of interrogatories. Limits and deadlines for outside expert testimony are also available on the Trustee's website.

**This brief summary is meant to highlight key steps and deadlines and is not intended to be comprehensive or to answer every question. Whether you have an attorney or are representing yourself, we urge you to consult the enclosed detailed Litigation Case Management Procedures for Avoidance Actions, which are also available on the Trustee's website.**

The Trustee and his team hope to hear from you promptly. We want to work with you to reach a mutually acceptable resolution.