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June 24, 2009

**VIA E-MAIL AND ECF FILING**

Honorable Burton R. Lifland  
United States Bankruptcy Court  
Southern District of New York  
One Bowling Green  
New York, NY 10004-1408

Re: *Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC*, No. 08 CV 1789 (Bankr.S.D.N.Y.) (BRL)

*Albanese, et al. v. Picard, Trustee*, Adv. Pro. No. 09-1265 (BRL)

Dear Judge Lifland:

We represent the Plaintiffs and prospective Class in the above referenced adversarial proceeding. We are responding to the June 24, 2009 letter ("Response Letter") sent to Your Honor by counsel for the Defendant Irving H. Picard (the "Trustee").

The Response Letter contains a number of inaccuracies that we look forward to addressing with the Court at the hearing on the Order to Show Cause. We feel compelled, however, to respond to the Trustee's claim that Plaintiffs' Order to Show Cause and Motion for Class Certification do not articulate a need for immediate relief. Nothing could be further from the truth.

The Response Letter fails to address the seminal issues confronting the non-filing victims of the Bernard L. Madoff fraud ("Madoff Victims"), who are adversely affected by the Trustee's definition of "net equity."<sup>1</sup> These non-filing Madoff Victims have three concerns which require

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<sup>1</sup> The Response Letter also incorrectly limits the proposed Class to customers with deposits greater than withdrawals in their Madoff account(s). Under the Trustee's "cash in/cash out" formula, some customers with deposits greater than withdrawals will be adversely affected by the Trustee's definition of "net equity." These customers may in fact receive disbursements under the Trustee's formula; however, their disbursements may be substantially decreased under the Trustee's unlawful definition of "net equity." Again, customers with deposits greater than withdrawals must waive their right to a jury trial in order to receive this disbursement prior to an opportunity to challenge the definition.

this Court's immediate attention: (1) meeting the pending July 2, 2009 bar date ("Bar Date") while maintaining their right to a jury trial; (2) exposure to "claw backs" without the option of a jury trial; and (3) subjecting themselves to this Court's jurisdiction.<sup>2</sup> The assertion raised in the Response Letter that "if customers believe they have claims, they should file them before the Bar Date to protect their interests," is misleading and fails to alleviate the dilemma faced by Madoff victims who have no way of knowing the lawful value of their claims or the possible waiver of their constitutional rights. (Response Letter at 3). Under the Trustee's unlawful definition of "net equity," Madoff Victims, who have withdrawn more funds than deposited, and have yet to file SIPC Customer Claim Forms are required to speculate as to this Court's final determination regarding the "net equity" definition, while also requiring them to potentially forfeit their right to a jury trial, and also subjecting themselves to this Court's jurisdiction, for a claim that is worthless under the Trustee's present definition. This is more than sufficient reason for immediate relief.

Counsel for the Trustee concedes that the "request for expedited relief might be proper if there were substantial prejudice to Plaintiffs in the absence of such relief." (Response Letter at 2). There is no greater prejudice than the forfeiture of one's constitutionally-protected right to a jury trial, especially for a claim that under the Trustee's formula is either worthless or substantially decreased.

For the reasons stated herein, this matter requires the immediate attention of this Court.

Very truly yours,  
Lax & Neville, LLP

By:

  
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Barry R. Lax

cc: David J. Sheehan

<sup>2</sup> Counsel for the Trustee asserts in the Response Letter that the customer concerns are based "solely on speculation about facts and motivation of unidentified individuals." (Response Letter at 3). However, this assertion is baseless as counsel affirmed in his declaration that the two non-filing Plaintiffs share these concerns.