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IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION
Mr Justice Andrew J. Jones QC
In Open Court, 5th February 2010

CAUSE NO. FSD 47 OF 2010
(Originally Cause No.504 of 2009)

IN THE MATTER OF THE COMPANIES LAW (2009 REVISION)

AND IN THE MATTER OF BERNARD L. MADOFF INVESTMENT SECURITIES LLC (in Securities Investor Protection Act liquidation)

JUDGEMENT

- 1 This is a petition by Irving H Picard in his capacity as Trustee of Bernard L. Madoff Investment Securities LLC ("BLMIS") by which he seeks a declaration pursuant to section 241(1)(a) of the Companies Law (2009 Revision) recognising his right to act in the Cayman Islands on behalf of or in the name of BLMIS.
- 2 Section 241(1) provides that "upon the application of a foreign representative the Court may make orders ancillary to a foreign bankruptcy proceeding for the purposes of – (a) recognising the right of a foreign representative to act in the Islands on behalf of or in the name of a debtor". Mr Picard's petition does not go on to seek any further ancillary relief under paragraphs (b) to (e) of section 241(1).
- 3 The expression "foreign representative" is defined to mean a trustee, liquidator or other official appointed in respect of a debtor for the purposes of a foreign bankruptcy proceeding. "Debtor" is defined to mean a foreign corporation or other foreign legal entity subject to a foreign bankruptcy proceeding in the country in which it is incorporated or established. BLMIS was incorporated in accordance with the laws of the state of New York in 1960 and is now the subject of bankruptcy proceedings pending before the Honourable Burton R. Lifland in the United States Bankruptcy

Court for the Southern District of New York. On 15th December 2008 Mr Picard was appointed trustee for the liquidation of the business of BLMIS with all the duties and powers of a trustee as prescribed in the United States Securities Investor Protection Act of 1970. The effect of these orders, as a matter of United States law, is that the powers of BLMIS' former directors and managers are terminated and Mr Picard is now the only person entitled to act on behalf of the company. He has powers and duties which are broadly equivalent to those of an official liquidator appointed under Part V of the Companies Law (2009 Revision). By his petition, Mr Picard seeks a declaration that, as a matter of Cayman Islands law, he is entitled to be recognised as the only person entitled to act on behalf of BLMIS in this jurisdiction.

4 A declaration under section 241(1)(a) takes effect for all purposes and is binding upon all persons within the territorial jurisdiction of the Grand Court. For this reason Rule 2(1) of the Foreign Bankruptcy Proceedings (International Co-operation) Rules 2008 provides that all such applications shall be made by petition, which means that they will be heard in open court and that any interested party may be heard. This matter first came before me on 21st January 2010 in the context of a proceeding commenced by Mr Picard against Harley International (Cayman) Limited (in liquidation) ("Harley"). In addition to the proceeding already commenced against Harley, counsel informed me that Mr Picard contemplates the possibility of asserting claims and, if necessary, commencing proceedings against other entities in this jurisdiction. Quite apart from counsel's statement, I concluded that Harley is most unlikely to be the only Cayman Islands entity having a legitimate interest in the outcome of Mr Picard's application, given the nature and scale of BLMIS's business and the fraud committed by Mr Bernard L. Madoff, its founder and former chief executive officer. I therefore directed that the hearing of the petition be advertised, both locally and internationally. Notice of the hearing was duly published on 27th January 2010 in the *Caymanian Compass* and in the *Wall Street Journal*. In the event, no other person wished to be heard on the petition.

5 Part XVI of the Companies Law (2009 Revision) was enacted in 2008 and came into force with effect from 1st March 2009. Section 241(1)(a) did not change the pre-existing conflict of laws rules relating to this subject. Its purpose is to provide foreign representatives with a convenient and expeditious method of establishing their credentials and right to act on behalf of a debtor in a way which will have universal effect within the jurisdiction, without the need to establish his right separately as against every individual counterparty. The Cayman Islands conflict of laws rules applicable to this issue are well established. First, all matters concerning the constitution of a corporation are governed by the law of the place of its incorporation. It follows that the law of the

place of incorporation determines who are the company's officials authorised to act on its behalf. Second, the authority of a bankruptcy trustee or liquidator appointed under the law of the place of a company's incorporation is recognised in the Cayman Islands. (Dicey and Morris, *The Conflict of Laws* 10th edition, Rule 139(2) and Rule 143).

6 In my judgment there is no doubt that, as a matter of Cayman Islands law, Mr Picard is entitled to be recognised as the sole person having the right to act on behalf of BLMIS in this jurisdiction and I make a declaration accordingly.

Dated 5th February 2010



The Honourable Mr Justice Andrew J. Jones QC

