CAUSE NO FSD 258 OF 2010

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

BETWEEN:

(1) IRVING H. PICARD
(as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC)

(2) BERNARD L. MADOFF INVESTMENT SECURITIES LLC
(in Securities Investor Protection Act liquidation)

Plaintiffs

- and -

HARLEY INTERNATIONAL (CAYMAN) LIMITED (in liquidation)

Defendant

WRIT OF SUMMONS

TO: HARLEY INTERNATIONAL (CAYMAN) LIMITED (in liquidation) of PO Box 10387, Airport, and Harbour Centre, 42 North Church St, Grand Cayman.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 23rd day of November 2010

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

CONCISE STATEMENT OF CLAIM

The claim relates to the Defendant's receipt of transfers amounting to more than US$ 1 billion (the "Transfers") from the Second Plaintiff ("BLMIS") in connection with a fraud operated by Bernard L. Madoff ("Madoff"). The Trustee makes a proprietary claim to the proceeds of the Transfers which the Defendant has retained and which stand to the Defendant's credit in these Islands (the "Credit Balance").

The aforesaid payments to the Defendant of monies beneficially owned by BLMIS: (i) were made in breach of the fiduciary duties owed to BLMIS by its directors, including Madoff; (ii) were made in excess or abuse of their powers as directors; and/or (iii) represented a misapplication of the property of BLMIS. The Defendant received those monies with actual or alternatively, constructive, knowledge of the aforesaid facts and matters; further or alternatively it did so in circumstances which otherwise made and/or make it unconscionable for the Defendant to obtain or retain any beneficial interest in the monies. In the premises, the Defendant holds the Credit Balance on constructive trust for the estate of BLMIS.

Further or in the alternative, the aforesaid payments to the Defendant were made while BLMIS was insolvent and in breach of Madoff's fiduciary duties to BLMIS's creditors. Accordingly, such transactions were void ab initio and the property so transacted should be returned to the BLMIS estate.

Further or in the further alternative, the Court should order the Defendant to pay the Credit Balance to the First Plaintiff ("Trustee") for BLMIS pursuant to section 145 of the Companies Law and/or at common law.

Further and in any event, in relation to Transfers which the Defendant received from BLMIS but has dissipated, the Trustee makes a personal claim against the Defendant for damages or equitable compensation for knowing receipt.

AND THE PLAINTIFFS CLAIM:

(1) A declaration that the estate of BLMIS is beneficially entitled to the Credit Balance (or such part thereof as represents the traceable proceeds of the Transfers), together with an order requiring the Defendant to pay the same to the Trustee as the duly appointed representative of the estate of BLMIS.

(2) Further or alternatively, an order under section 145 of the Companies Law and/or at common law requiring the Defendant to return to the Trustee as the duly appointed representative of the estate of BLMIS such payments to the Defendant as occurred within six months immediately preceding the commencement of the liquidation of BLMIS ("the Six Month Payments"), together with judgment against the Defendant for any shortfall (i.e., to the extent that the Credit Balance is insufficient to pay the Six Month Payments to the Trustee).

(3) Damages and/or equitable compensation.

(4) Interest pursuant to section 34 of the Judicature Law on such damages as may be awarded to the Trustee herein, at such rate and for such period as the Court thinks fit, or alternatively compound (or, in the further alternative, simple) interest in equity on

such equitable compensation as may be awarded to the Trustee herein, at such rate and for such period as the Court thinks fit.

(5) Further or other relief.

(6) Costs.

Higgs & Johnson

Higgs & Johnson, attorneys for the Plaintiffs

THIS WRIT was issued by Higgs & Johnson whose address for service is PO Box 866 Georgetown, Grand Cayman, KY1 – 1103 and Fifth Floor, Anderson Square Building, Shedden Road, Georgetown, Grand Cayman, Cayman Islands.

Cause No. FSD 258 of 2010

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

B E T W E E N :

(1) IRVING H. PICARD
(AS TRUSTEE FOR THE LIQUIDATION OF
BERNARD L. MADOFF INVESTMENT SECURITIES LLC)

(2) BERNARD L. MADOFF INVESTMENT SECURITIES LLC (IN SECURITIES INVESTOR PROTECTION ACT LIQUIDATION)

Plaintiffs

and

HARLEY INTERNATIONAL (CAYMAN) LIMITED
(IN LIQUIDATION)

Defendant

STATEMENT OF CLAIM

I. Parties

1. The First Plaintiff ("the Trustee") has been appointed under the laws of the United States of America and in particular under the Securities Investor Protection Act, 15 U.S.C., §§ 78aaa *et seq.* ("SIPA"), as the trustee for the liquidation of the business of the Second Plaintiff, Bernard L. Madoff Investment Securities LLC ("BLMIS").

2. BLMIS is a limited liability company incorporated under the laws of New York that, prior to the events described below, was wholly owned and controlled by Bernard L. Madoff ("Madoff"). The Trustee and BLMIS are together referred to as the Plaintiff.

3. The Defendant is an international business company incorporated under the laws of the Cayman Islands. At all material times, the Defendant carried on business as a fund of funds. Acting as a pooled investment vehicle, the Defendant solicited funds from investors and other investment funds ("Feeder Funds") to be invested with the Defendant, which in turn invested 100% with BLMIS. The Defendant was registered with the Cayman Islands

Monetary Authority as a mutual fund. The Defendant is now in insolvent liquidation. On 21 January 2010, Mr Justice Andrew Jones QC gave the Trustee permission to commence these proceedings against the Defendant.

II. Overview

4. As more particularly pleaded below, this claim relates to the Defendant's receipt of sums amounting to more than US$1 billion from BLMIS in connection with a fraud operated by Madoff.

5. In relation to those payments from BLMIS which the Defendant has retained and which stand to the Defendant's credit in its bank account in the Cayman Islands, the Trustee makes a proprietary claim on the following grounds:

   (1) The aforesaid payments to the Defendant of monies beneficially owned by BLMIS: (i) were made in breach of the fiduciary duties owed to BLMIS and its creditors by Madoff; (ii) were made in excess or abuse of Madoff's position as an officer of the company; and/or (iii) represented a misapplication of the property of BLMIS and its customers. The Defendant received those monies with actual, alternatively constructive, knowledge of the aforesaid facts and matters; further or alternatively it did so in circumstances which otherwise made and/or make it unconscionable for the Defendant to obtain or retain any beneficial interest in the monies. In the premises, the Defendant holds the Credit Balance on constructive trust for the estate of BLMIS.

   (2) Further or in the further alternative, the aforesaid payments to the Defendant were made while BLMIS was insolvent and in breach of Madoff's fiduciary duties to BLMIS's creditors. Accordingly, such transactions were void *ab initio* and the property so transacted should be returned to the BLMIS estate.

   (3) Further or in the further alternative, the Court should order the Defendant to pay the Credit Balance to the Trustee for BLMIS pursuant to section 145 of the Companies Law and/or at common law.

6. Further, in relation to monies that the Defendant received from BLMIS but has dissipated, the Trustee makes a personal claim against the Defendant for damages or equitable compensation for knowing receipt.

III. Factual Background

7. BLMIS was founded in 1960 and operated during the relevant time frame from its principal place of business at 885 Third Avenue, New York, New York, USA.

8. Madoff was the founder, chairman, and chief executive officer of BLMIS and ran BLMIS together with several family members and a number of additional employees.

9. During all relevant times, Madoff owed a fiduciary duty to BLMIS and its creditors including: (1) a duty to act bona fide in the best interests of BLMIS and its creditors; (2) a duty not to misapply BLMIS property; (3) a duty to avoid conflicts of interests; and (4) a duty to exercise reasonable care, skill and diligence.

10. BLMIS had three divisions: (1) investment advisory (the "IA Business"); (2) market making; and (3) proprietary trading.

11. Madoff purported to operate the IA Business as a legitimate and successful investment business in which BLMIS received monies from private and institutional investors and invested the same in stocks and options pursuant to a "split-strike conversion strategy" devised by Madoff, which would generate profits that would from time to time be paid out to investors upon their request for a redemption.

12. In reality, as more particularly pleaded below, the IA Business was a fraudulent scheme operated by Madoff in order to obtain money from investors under false pretences.

a. The fraud

(1) The IA Business was a fraud on a massive scale. This fraud, of the kind colloquially known as a "Ponzi" Scheme, was deceptively simple. The IA Business engaged in no material investment activity and generated virtually no investment returns. The

"investments" made by customers were in fact simply commingled into a single bank account held at the New York Branch of JP Morgan Chase & Co ("JP Morgan"), account number xxxxxxxxxxx703 ("the '703 Account"). Madoff and his associates used this account as though it were their own personal bank account.

(2) The purported investment "returns" paid to investors by BLMIS were nothing more than payments made from funds paid into the scheme by new and existing investors. This is also true of the redemptions made by the Defendant, which consisted of funds that had been taken from other investors for the benefit of the Defendant.

(3) In December 2008, when requests by investors for redemptions exceeded the amount of funds deposited by new investors, the Ponzi scheme collapsed.

b. Concealment of the scheme and false representations

(4) As more particularly pleaded in the following subparagraphs, Madoff sought to conceal the fraudulent nature of the IA Business, and falsely represented that the IA Business was a legitimate investment business.

(5) Madoff maintained that the success of the IA Business was premised on an investment strategy called the "split-strike conversion" strategy. That strategy purportedly operated as follows:

(a) Investors' funds would be invested in a basket of common stocks within the S&P 100 Index (an index of stocks maintained by Standard and Poor's of the 100 largest publicly traded companies in the United States).

(b) Purchases were to be hedged with option contracts— BLMIS would purchase and sell S&P 100 option contracts, thereby limiting the downside risk (as well as potential upside gains) of price changes in the basket of stocks.

(c) During the periods in which investors' funds were intermittently out of the market, such funds would purportedly be invested in United States government-issued securities.

(6) The aforesaid representations were false. There were no such investments, no option contracts, and no financial activity of the type described above. The IA Business did engage in a *de minimis* number of securities trades at the direction of a handful of investors, but this did not form a material amount of trading and no trades related to split-strike accounts, including Defendant's account.

(7) BLMIS issued to each of its clients monthly account statements purporting to show the securities that were owned in, or had been traded through, that client's account or accounts with BLMIS. From these statements the growth of and profit in such accounts could be determined, but in reality there was no such growth or profit.

(8) Further, the securities, purchases and sales described in the account statements never occurred or existed and were fictitious, as Madoff admitted at the Plea Hearing following his arrest (as particularised below). Indeed, based on the Trustee's investigation to date and with the exception of certain isolated individual trades which are not material to the present claim, there is no record of the IA Business having cleared any purchase or sale of securities at the Depository Trust & Clearing Corporation (the "DTCC"), the principal clearing house for such transactions, or on any trading platform on which BLMIS could reasonably have traded securities.

(9) Nor did the IA Business ever purchase or sell any of the options that Madoff claimed on customer statements to have purchased. The majority of exchange traded options related to S&P 100 companies, including options on the index itself, clear through the Options Clearing Corporation ("OCC"). Based on the Trustee's investigations to date, the OCC has no records of the IA Business

having transacted in any exchange-listed options. Further, based on the Trustee's investigations to date, there is no record of BLMIS having cleared a single purchase or sale of securities on any exchange in connection with the split-strike conversion strategy.

(10) Throughout the duration of the Ponzi scheme, certain investors would from time to time request distributions of the "profits" falsely recorded in their accounts, and BLMIS would, from time to time, pay monies which Madoff represented to be "profits" to investors. Such "profits" were fictitious and Madoff's representations were false. No profits were ever generated—deposits by investors comprised the sole source of monies paid out of the scheme.

(11) Other investors, from time to time, sought to redeem or close their accounts, or requested the return of part of the principal deposited. BLMIS would make payments to such investors that were consistent with the false account statements that investors had been receiving. In reality, the investors' true account balances had been comingled and depleted by BLMIS's payments out of the scheme to other investors. But Madoff perpetuated the fraud on current and prospective investors by making payments in accordance with redemptions premised on false account statements.

(12) The Ponzi scheme continued until December 2008, when the requests for redemptions overwhelmed the flow of new investments and caused its inevitable collapse.

(13) Over the course of the scheme, there were more than 8,000 client accounts at BLMIS. In early December 2008, BLMIS generated client account statements for its nearly 5,000 open client accounts. When added together, these statements purport that clients of BLMIS had approximately $64.9 billion invested with BLMIS, In reality, BLMIS had assets on hand only worth a small fraction of that amount.

(14) Madoff represented to clients and regulators that BLMIS conducted trades on the over-the-counter market, after hours. Madoff periodically transferred tens of millions of dollars to Madoff Securities International Limited ("MSIL"), a London-based limited company incorporated under the laws of England and Wales and predominantly owned by Madoff and by members of his immediate family, to simulate the existence of overnight commercial securities transactions taking place overseas. In reality, however, MSIL never used those funds to purchase securities for IA Business clients.

(15) BLMIS did not register as an Investment Advisor with the US regulator until forced to by the United States Securities and Exchange Commission ("SEC") in August 2006. Further, in or about January 2008, BLMIS filed with the SEC an update to its Uniform Application for Investment Adviser Registration. The application represented, *inter alia*, that as of December 2007 BLMIS had 23 customer accounts and assets under management of approximately $17.1 billion. In fact, at December 2007, BLMIS had over 4,900 active customer accounts, and had falsified customer account statements with a recorded value of client assets under management at approximately $68 billion.

(16) Madoff also procured the preparation of false audit reports by Friehling & Horowitz, a three-person accounting firm in Rockland County, New York, described in greater detail below.

c. Madoff's fraudulent intent

(17) Madoff was arrested by United States federal agents on 11 December 2008 for violation of criminal securities laws, including securities fraud, investment fraud, and mail and wire fraud. Upon his arrest, Madoff confessed that he had been conducting a Ponzi scheme for many years.

(18) At a plea hearing on 12 March 2009 in the case captioned *United States v Madoff*, United States criminal proceedings with Case No.

09-CR-213(DC) ("the Plea Hearing"), Madoff pleaded guilty to an eleven-count criminal information filed against him by the United States Attorney's Office for the Southern District of New York. He admitted that he had *"operated a Ponzi scheme through the investment advisory side of [BLMIS]"* (transcript of hearing at 23:14-17). Additionally, Madoff asserted *"[a]s I engaged in my fraud, I knew that what I was doing [was] wrong, indeed criminal"* (*ibid.* at 23:20-21).

(19) Madoff's intention in making the false concealments and representations as pleaded above was to induce investors to deposit cash with BLMIS in order to enrich Madoff and his associates and to sustain the continued operation of the Ponzi scheme. His intention was, by his own admission, criminal, dishonest and fraudulent.

(20) On 29 June 2009, Madoff was sentenced to 150 years in prison and ordered to forfeit his assets. He is currently serving his prison sentence in the US.

d. SIPA liquidation

(21) On 11 December 2008, the day of Madoff's arrest, the SEC filed a complaint in the United States District Court for the Southern District of New York ("the District Court") under claim number 08 CV 10791, ("the SEC Action").

(22) On 12 December 2008, the Honorable Louis L. Stanton of the District Court entered an order appointing Lee S. Richards, Esq. as receiver for the assets of BLMIS.

(23) On 15 December 2008, pursuant to SIPA § 78eee(a)(4)(A), the SEC consented to a combination of its own action with an application of the Securities Investor Protection Corporation ("SIPC"). Thereafter, pursuant to SIPA § 78eee(a)(4)(B), SIPC filed an application in the District Court alleging, *inter alia*, that BLMIS was not able to meet its obligations to securities customers as they fell due and, accordingly, its customers needed the protections afforded by SIPA.

(24) That same day, Judge Stanton granted the SIPC application and entered an order pursuant to SIPA (the "Protective Decree"), which, so far as material:

(a) appointed the Trustee as trustee for the liquidation of the business of BLMIS pursuant to SIPA § 78eee(b)(3);

(b) appointed Baker & Hostetler LLP as counsel to the Trustee pursuant to SIPA § 78eee(b)(3);

(c) removed the case to the United States Bankruptcy Court of the Southern District of New York; and

(d) by the Protective Decree, the Receiver was removed as Receiver for BLMIS.

(25) By orders dated 23 December 2008 and 4 February 2009, respectively, the Bankruptcy Court approved the Trustee's bond as trustee and found that the Trustee was a disinterested person. The Trustee is accordingly duly qualified as a matter of United States federal law to serve as trustee in liquidation for BLMIS and to act on behalf of the estate of BLMIS.

IV. Payments from BLMIS to the Defendant

13. At all material times, the Defendant (or its predecessor, Harley International Limited) was a client of the IA Business.

14. On or around 17 April 1996, the Defendant (or its predecessor, Harley International Limited) executed a Customer Agreement, an Option Agreement, and a Trading Authorization Limited to Purchases and Sales of Securities (the "Account Agreements") and delivered such papers to BLMIS at BLMIS's headquarters at 885 Third Avenue, New York, New York.

15. Thereafter the Defendant maintained an account with BLMIS, which was designated account 1FN094 (the "Account"). That account, however, was by and large a fiction. Substantially all investors' monies deposited into BLMIS's IA Business were comingled into the '703 Account.

16. Between 24 April 1996 and 11 December 2008, the Defendant "invested" in excess of US$ 2 billion with BLMIS via 133 separate wire transfers into the

'703 Account. The Defendant was one of many such "investors" with BLMIS whose funds were commingled into the '703 Account.

17. Between 24 April 1996 and 11 December 2008, Madoff caused BLMIS to make payments in excess of US$ 1 billion to (or for the account of) the Defendant (the "Transfers"), including without limitation the following:

(1) US$ 20,000 on 27 November 1998.

(2) US$ 6,000,000 on 23 June 2004.

(3) US$ 50,000,000 on 27 February 2008.

(4) US$ 40,000,000 on 26 March 2008.

(5) US$ 56,000,000 on 12 May 2008.

(6) US$ 31,800,000 on 2 June 2008

(7) US$ 120,000,000 on 27 June 2008

(8) US$ 197,000,000 on 10 July 2008.

(9) US$ 147,000,000 on 3 September 2008.

(10) US$ 120,000,000 on 23 September 2008.

(11) US$ 40,000,000 on 30 September 2008.

(12) US$ 180,000,000 on 16 October 2008.

(13) US$ 10,000,000 on 22 October 2008.

(14) US$ 29,000,000 on 5 November 2008.

(15) US$ 46,000,000 on 9 December 2008.

18. Of these Transfers, the Defendant has retained the sum of approximately US$ 12 million, which stands to its credit in its bank account in the Cayman Islands.

V. Cayman law constructive trust claim

19. The said Transfers were made in breach of the fiduciary duties owed to BLMIS and its creditors by Madoff and the officers and management of BLMIS (collectively, the "BLMIS Management").

PARTICULARS OF BREACH

(1) The Transfers were not bona fide in the best interests of BLMIS or for any proper purpose capable of benefitting BLMIS or its creditors.

(2) Further or alternatively, by causing or procuring BLMIS to make the Transfers, BLMIS Management failed to exercise reasonable care, skill and diligence, and were instead driven by the criminal, dishonest and fraudulent motives and intentions which lay behind the fraud itself.

20. Further or alternatively, the Transfers:

(1) were made in excess and/or abuse of BLMIS Management's power or authority vis-à-vis BLMIS; and/or

(2) represented a misapplication of BLMIS property.

21. The Defendant received each and all of the Transfers with knowledge, alternatively constructive knowledge, of the matters pleaded in paragraphs 19 and 20 above and/or it was and is unconscionable for the Defendant to obtain or assert any beneficial interest in the Transfers. Pending disclosure in this action, and without limitation, the Trustee relies by way of particulars upon the following clear and unmistakeable indicia of fraud, of which the Defendant was aware, to which the Defendant wilfully or recklessly shut its eyes to, and/or about which the Defendant, as a sophisticated investor, ought reasonably to have known and to have taken steps to investigate:

PARTICULARS OF KNOWLEDGE

a. The basic structure of IA Business was opaque, secretive, and lacked independent oversight

(1) BLMIS was substantially a family-run business. Madoff family members controlled almost every key position at the firm, including, critically, that of Chief Compliance Officer, which position was held by Madoff's brother Peter. Structured as it was, BLMIS was almost entirely devoid of internal checks and balances.

Bernard Madoff himself held positions that would normally be occupied by four separate entities – he was the investment adviser, custodian, and administrator of the '703 Account, as well as the broker dealer who initiated and executed the phantom trades. This meant that there was neither an independent custodian to assure the proper segregation of assets, nor was there an independent third party to verify the existence and value of Madoff's investments or transactions.

(2) BLMIS did not provide its customers with real-time electronic access to their accounts, which was and is customary in the industry for hedge fund and fund of fund investors. Instead, BLMIS utilised outmoded technology providing printed account statements and paper trading confirmations that were sent via US mail to BLMIS account managers. This was so despite the fact that Madoff was a pioneer of electronic trading.

(3) Even the one "independent" check on the IA Business's activities -- the fact that it was purportedly audited by an independent auditor—was itself a major warning sign for a sophisticated investor such as Defendant. BLMIS, which had tens of billions of dollars under management, was audited not by one of the major audit firms, but by Friehling & Horowitz CPAs P.C. ("F&H"), a three-person accounting firm. Of the two accountants at the firm, one was semi-retired and living in Florida for many years prior to the collapse of BLMIS. The firm's offices were located in a strip mall in suburban Rockland County, New York. The size and qualifications of F&H and the nature of the services they provided were readily accessible to the Defendant.

(4) F&H's woeful inadequacy for the job was public knowledge. All US accounting firms that conduct audits must enroll in the American Institute of Certified Public Accountants ("AICPA") peer review program. Under that program, the quality of member firms' audits is assessed each year by experienced audit professionals. AICPA peer reviews are available to the public.

Anyone looking to see how F&H fared as an auditor under the AICPA review process would have learned that F&H had not been reviewed since 1993. And why not? Because F&H stated – in writing – that it did not conduct audits.

(5) Madoff also blocked access by regulators to the internal workings of the IA Business. And he did so in an extraordinarily suspicious manner, given the nature of the split-strike conversion strategy. Pursuant to SEC rules, institutional investment managers who exercise investment discretion over accounts having more than $100 million or more in Section 13(f) securities (*i.e.*, exchange traded or NASDAQ-quoted securities) must report their holdings on Form 13F to the SEC. Form 13F requires disclosure of the names of the institutional investment managers, the names of the securities they manage and the class of securities, the Committee on Uniform Securities Identification Procedures ("CUSIP") numbers (an identification for most securities, including stocks of all registered US companies and US government and municipal bonds), the number of shares owned, and the total market value of each security. Once Madoff registered as an Investment Advisor in August 2006, prior to the end of each quarter, Madoff would purportedly move customer funds "out of the market" ostensibly to avoid the disclosure requirements attendant to a 13F filing. This is extraordinary considering that Madoff's investment strategy was largely premised on short-term market timing.

(6) The lack of segregation of duties and the lack of independent and regulatory oversight applicable to BLMIS posed clear-cut warning signs that called for increased due diligence. But Madoff would not allow any material inquiry into his operations by investors. Further, he insisted that funds investing with the IA Business should not mention the Madoff or BLMIS names in placement memoranda or marketing materials. He never provided any explanations or monthly performance attribution. When a Madoff investor sought further insight into the IA Business's structure and

practice, Madoff would block access and threaten to exclude the fund or individual from participation in the IA Business. While this should have been a sign to abandon any intent to invest with BLMIS, several investors, including the Defendant, chose instead to turn a blind eye.

(7) BLMIS gave the Defendant a powerful incentive to ignore the large number of major warning signs. Contrary to industry standards, Madoff did not charge the Defendant any management or performance fee, instead allowing the Defendant to pass that charge along to its own investors. Madoff purported to be satisfied with simply earning the trading commissions for every share or option traded – by all accounts an extraordinarily generous and highly unusual gesture. By contrast, the Defendant, whose only role was to funnel money to BLMIS, received substantial administrative fees and a share of the profits.

b. Madoff's investment results were not just too good to be true, they were virtually impossible

(8) The Defendant knew or should have known that a market neutral investment strategy, purportedly based on Madoff's unique ability to perfectly time the market, could not genuinely have continued to grow at such a stable rate when a forced liquidation of all securities positions took place four times a year at intervals based not on market timing but on reporting deadlines.

(9) Moreover, Madoff had tens of billions of dollars under management. The Defendant alone had well over a billion dollars invested with Madoff. Were security positions of this magnitude to be liquidated at the end of every quarter, there would have been a very palpable effect on the securities and US treasuries markets. But no such market movement was ever seen.

(10) Any type of quantitative review of Madoff's purported utilization of the split-strike strategy would have revealed that Madoff's performance simply was so improbable as to be effectively

impossible. From at least 1998 until 2008, Defendant's annual returns with BLMIS averaged 12.5 percent. In and of itself, this average rate of return is unremarkable. But this rate of return was achieved with only four months of negative returns during this 131 month period of reported operations from January 1998 through November 2008. Such returns have no correlation with the historical fluctuations of the S&P 100 Index, on which the IA Business's trading activity was supposedly based. It is simply not possible to achieve such a consistent pattern of profitability, even in market downturns, without cheating. As set forth in the table below, the consistency of the rates of return in the face of major market downturns is facially impossible:

Figure 1
Harley Rates of Return vs. S&P Rates of Return
1998-2008

Year	Harley Rate of Return*	S&P 100 Rate of Return
1998	17.6%	31.33%
1999	16.8%	31.26%
2000	**13.9%**	(13.42%)
2001	**13.0%**	(14.88%)
2002	**12.0%**	(23.88%)
2003	10.6%	23.84%
2004	9.9%	4.45%
2005	**10.5%**	(0.92%)
2006	13.2%	15.86%
2007	10.9%	3.82%
2008**	**9.3%**	(36.86%)

* The rate of return reflected herein is prior to any fees being charged by the Fund, and are not net of fees.

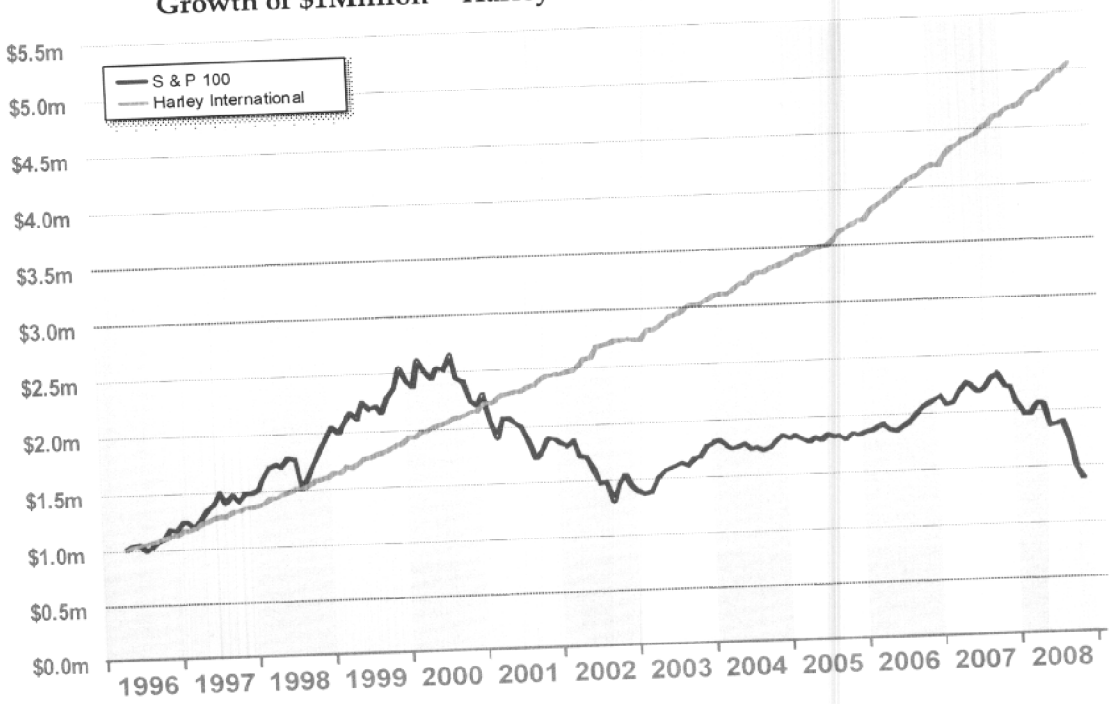
** Through November.

(11) Madoff's returns were impossibly consistent even during periods of severe market downturns. For example, Madoff reported consistently positive returns throughout the duration of the Russian debt/Long Term Capital Management crises of 1998; the dot com bubble in 2000; the 2000-2002 bear market, including the time surrounding September 11, 2001; and the recession and housing crisis of 2008. BLMIS continued to generate a positive

return on investments even during the last 14 months of BLMIS's existence, when the S&P 100 fell no less than 39.4 percent. These results were simply not credible. A simple glance at the straight line average of Defendant's investment results with BLMIS juxtaposed to the S&P 100 returns over the same period clearly reveals an impossibly perfect string of results over time (see figure 2 below).

Figure 2

Growth of $1Million -- Harley International vs. S&P 100



(12) Pricing reflected on Defendant's account statements further demonstrated the implausibility of Madoff's trades. When Madoff was purchasing shares, more than three quarters of the time the reported average purchase price was in the lower half of the daily trade range. By contrast, when selling shares, over 70 percent of the time, the sale price was in the upper half of the daily trade range. Routine quantitative analysis of these prices would have revealed the statistical implausibility of the trade prices.

(13) Madoff also engaged in impossible option transactions. As discussed above, the implementation of Madoff's split-strike

conversion strategy required the continuous execution of large numbers of S&P 100 Index put and call options. BLMIS purportedly purchased S&P 100 Index options – which are traded on the Chicago Board Options Exchange ("CBOE") – in combination with purchases of select underlying stocks that are components of the S&P 100 Index. On many occasions, the volume related to options contracts BLMIS reported to its customers, exceeded many times over the total volume of contracts for S&P 100 Index options with the same purchase date, strike price, and expiration (the "S&P 100 Options") traded on the CBOE. Indeed, as set forth in the tables below, over the last two years of its existence, BLMIS purported to trade – on Defendant's account – volumes that were frequently many thousands of times over the total number of put and call options for S&P 100 Options executed on the CBOE.

Figure 3

Call Options Traded on Behalf of the Harley Account (1FN094)
2007-2008

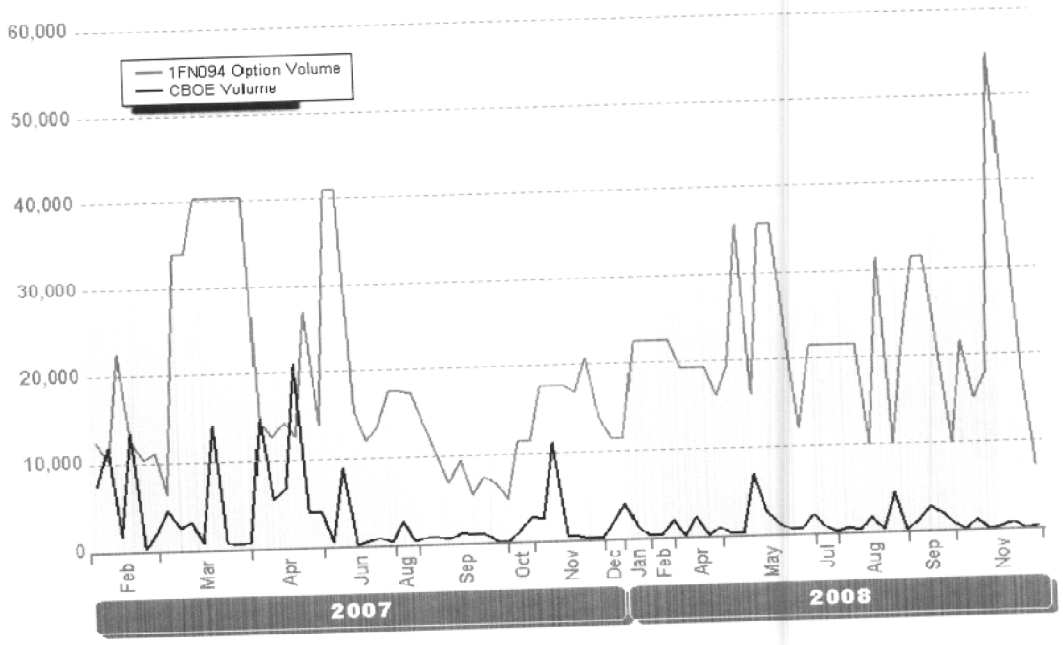
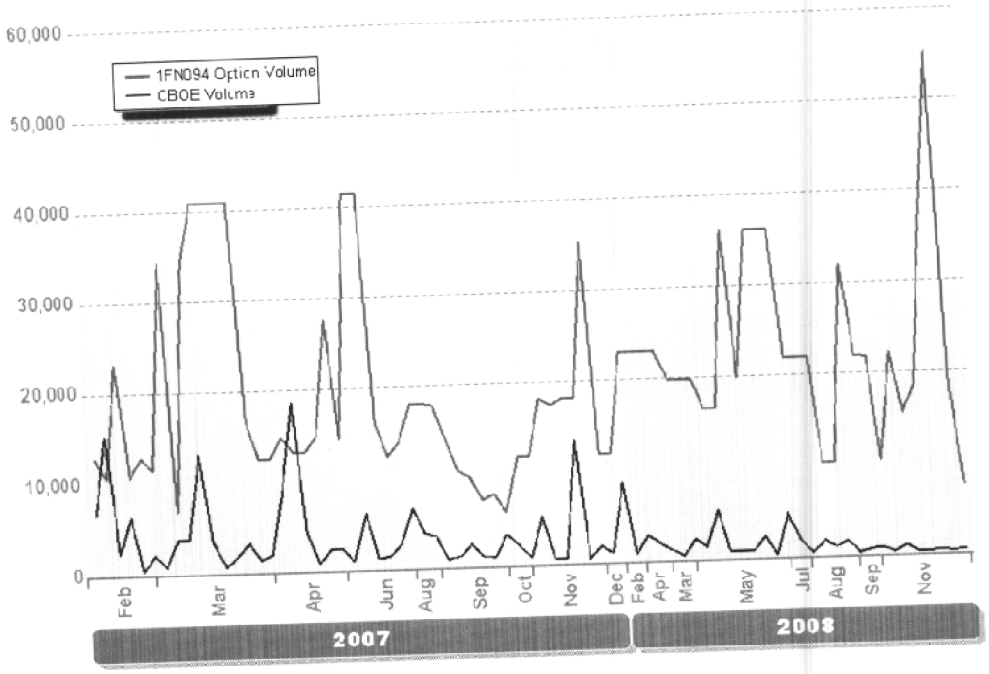


Figure 4

Put Options Traded on Behalf of the Harley Account (1FN094)
2007-2008



(14) Notwithstanding the fact that the trade confirmations reflected volumes of options traded on the CBOE, and showed the CUSIP numbers corresponding to the trade (which would appear only in trades executed on the CBOE), Madoff repeatedly told investors that he purchased these options in the over-the-counter ("OTC") market. Just the mere suggestion that this volume of options was bought in the OTC market should have resulted in more investigation and further questions by a sophisticated investor such as Defendant. Furthermore, trading options in the OTC market would likely have been more expensive than trading over the CBOE, yet those costs did not appear to be passed on to BLMIS's investors. The absence of such costs, together with BLMIS's representation that it was trading in the OTC market, should have prompted a sophisticated hedge fund such as the Defendant to request verification of the trades and demand more transparency into the operations of BLMIS.

(15) Finally, even if Madoff had been able to execute the volume of S&P 100 Index options he claimed on customer statements and at the prices reflected therein, this would not suffice to explain BLMIS's extraordinary stability and consistency of return.

c. Notwithstanding Madoff's efforts to conceal his scheme, the fraud was evident under the basic scrutiny attendant to a proper diligence review

(16) The fraudulent nature of the scheme simply could not stand up to the scrutiny of a properly-run due diligence exercise. In fact, several individuals and institutions did spot the danger signs:

(a) As early as May 2001, the extraordinary consistency of the IA Business's returns was questioned in an article entitled "Madoff Tops Charts; Skeptics Ask How" in MAR/*Hedge*, a semi-monthly newsletter widely read by professionals in the hedge fund industry. The article noted that many current and former traders, other money managers, consultants, quantitative analysts and fund of fund executives familiar with the split-strike conversion strategy purportedly used by Madoff to manage the assets questioned the consistency of the reported returns and observed that *'others who use or used the strategy are known to have had nowhere near the same degree of success'*.

(b) A second article, dated 27 May 2001 (*Barron's*, "Don't Ask, Don't Tell: Bernie Madoff is so secretive, he even asks investors to keep mum"), raised serious concerns about the credibility of BLMIS's reported compound average returns of 15% for over a decade. The article noted the scepticism on Wall Street and lack of transparency around Madoff's IA Business based on Madoff's unwillingness to answer questions about his investment strategy.

(c) Edward Thorp, "the grandfather of quantitative analysis" concluded over the course of a single day (as far back as

1991) that Madoff's claimed returns were impossible and possibly fraudulent. In response to the MAR/Hedge and *Barron's* articles referenced above, Thorpe wrote a Hedge Manager friend expressing serious concerns about Madoff: *"Just read the Barron's article, all it does is reinforce my previous suspicions. Do you have access to the "actual" trades done in one account? If so, can you establish that they could be real? That means checking to see if they are reported on a timely basis, rather than substantially delayed, that they are listed options; that those options could have traded at those prices and in the volumes reported on the exchanges where the confirms said the trades occurred, and ditto with the stocks. What if you scale up your representative account to ___$. Could the volume of imputed trading in the options markets, in the "universe" traded, actually have been done."* Thorpe, in his assessment of Madoff, spells out the basic diligence that Defendants could and should have undertaken as fiduciaries. And he did it almost two decades before the fall.

(d) As early as 1998, Cambridge Associates consistently recommended that clients stay away from Madoff and Madoff-related Feeder Funds due to lack of transparency, a fear of front-running the market, and a general inability to understand how the investment strategy could produce cash-like, bond-like consistency of returns in an equity strategy. By 2004, Cambridge Associates were more pointed in their discomfort, stating, *"it felt illegal . . . Madoff was not transparent"* further suggesting that *"[i]t might be interesting to compile some historic hedge fund fraud/scams for them to mull over."*

(e) In mid-2003, Robert Rosenkranz of Acorn Partners, a fund of funds and an investment adviser for high net worth individuals, conducted due diligence of Madoff/BLMIS and found it likely that BLMIS's account statements were

generated as part of a fraudulent scheme, and "that fraudulent activity was highly likely, possibly a Ponzi scheme." Shortly after Madoff was arrested, in a letter to investors, Acorn Partners succinctly described the indicia of fraud that led it to conclude years prior that Madoff was a fraud:

- *We had considered investing in a Madoff managed account, and decided to pass for reasons that give a useful insight into our due diligence process.*
- *First, we ascertained that the description of the strategy (purchase of large cap stocks versus sale of out of the money calls) appeared to be inconsistent with the pattern of returns in the track record, which showed no monthly losses.*
- *Second, we persuaded a Madoff investor to share with us several months of his account statements with Madoff. These revealed a pattern of purchases at or close to daily lows and sales at or close to daily highs, which is virtually impossible to achieve. Moreover, the trading volumes reflected in the account (projected to reflect his account's share of Madoff's purported assets under management at the time) were vastly in excess of actually reported trading volumes.*
- *Third, we noted that Madoff operated through managed accounts, rather than by setting up a hedge fund of his own. That was suspicious inasmuch as hedge fund fees are typically much higher than the brokerage commissions Madoff was meant to be charging. We suspected the requirement for annual hedge fund audits was the reason he wanted to avoid that approach. We knew that when his clients are audited, their auditors simply look at the account statements and transaction reports generated by the*

brokerage firm; they don't investigate the books of the brokerage firm itself.

- *Fourth, although brokerage firms are required to provide annual audit reports, the investor appeared not to have received any. With considerable perseverance, we obtained audit reports filed with the SEC, which were prepared by an utterly obscure accounting firm located in Rockland County New York.*

- *Fifth, we reviewed the audit report itself, which showed no evidence of customer activity whatsoever, neither accounts payables to or accounts receivable from customers. They appeared to be the reports of a market maker, not of a firm that at the time was meant to have some $20 billion of customer accounts.*

- *Taken altogether, these were not merely warning lights, but a smoking gun. The only plausible explanation we could conceive was that the account statements and trade confirmations were not bona fide but were generated as part of some sort of fraudulent or improper activity.*

(f) In 2007, Aksia, LLC, an independent hedge fund research and advisory firm "knew enough to protect" its clients, advising them against investing with BLMIS, Madoff, or any of his Feeder Funds. In a post-Madoff arrest letter to clients Aksia summarized why their diligence led them to not recommend Madoff feeders as follows:

- *Aksia published extensive reports on several of the "feeder funds" which allocated their capital to Madoff Securities. . . there were a host of red flags, which taken together made us concerned about the safety of clients' assets should they invest in these feeders (emphasis added). Consequently every time we were*

asked by clients, we waved them away from the Madoff Feeder Funds. . . As a research firm we are forced to make difficult judgments about the hedge funds we evaluate for clients. This was not the case with the Madoff feeder funds. Our judgment was swift given the extensive list of red flags. Some of those red flags were as follows:

- *It seemed implausible that the S&P 100 options market that Madoff purported to trade could handle the size of the combined feeder funds' assets which we estimated to be $13 billion.*
- *The feeder funds had recognized administrators and auditors but substantially all of the assets were custodied with Madoff Securities. This necessitated Aksia checking the auditor of Madoff Securities, Friehling & Horowitz (not a fictitious audit firm). After some investigating, we concluded that Friehling & Horowitz had three employees, of which one was 78 years old and living in Florida, one was a secretary, and one was an active 47 year old accountant (and the office in Rockland County, NY was only 13 ft x 18ft large). This operation appeared small given the scale and scope of Madoff's activities.*
- *There was at least $13 billion in all the feeder funds, but our standard 13F review showed scatterings of small positions in small (non-S&P100) equities. The explanation provided by the feeder fund managers was that the strategy is 100% cash at every quarter end.*
- *Madoff's website claimed that the firm was technologically advanced ("the clearing and settlement process is rooted in advanced technology") and the feeder managers claimed 100% transparency. But when we asked to see the transparency during our onsite visits, we were shown paper tickets that were*

sent via US mail daily to the managers. The managers had no demonstrated electronic access to their funds accounts at Madoff. Paper copies provide a hedge fund manager with the end of the day ability to manufacture trade tickets that confirm the investment results.

- *Conversations with former employees indicated a high degree of secrecy surrounding the trading of these feeder fund accounts. Key Madoff family members (brother, daughter, two sons) seemed to control all the key positions at the firm. Aksia is consistently negative on firms where key and control positions are held by family members.*

- *Madoff Securities, through discretionary brokerage agreements, initiated trades in the accounts, executed the trades, and custodied and administered the assets. This seemed to be a clear conflict of interest and a lack of segregation of duties is high on our list of red flags.*

(g) Between 2003 and 2008, many other banks and industry advisers after having conducted reasonable due diligence refused to deal with Madoff due to serious concerns over the legitimacy of the IA Business's operations. These included, without limitation, Société Generale, Goldman Sachs, CitiGroup, Morgan Stanley, Merrill Lynch, and Bear Stearns.

(17) The journalists and business people who knew enough to be wary of Madoff based their conclusions on publicly available facts concerning BLMIS's investment strategies and practices. The Defendant had even more information at its disposal. This information showed that (1) BLMIS's investment returns were so improbable as to be impossible; (2) the split-strike conversion strategy, as reported on the Defendant's account statements, was

impossible to execute; and (3) the trades reported on those statements were fictitious.

VII. US law constructive trust claims

22. Further or alternatively, as a matter of US law, BLMIS retained a beneficial interest in the Transfers (of which part or all of the Credit Balance represents the traceable proceeds) and the Defendant received and held the Transfers on constructive trust for BLMIS and must now restore the same to the Trustee.

PARTICULARS OF US LAW

(1) As a matter of US law, a constructive trust was created by virtue of the transfers from BLMIS to the Defendant as of at least the early 1990s.

(2) Under US law, a company may recover assets transferred to a third party on the basis of the creation of a constructive trust provided the following elements are met:

(a) at the time of the relevant transfers, the company was insolvent;

(b) as a result of that insolvency, BLMIS Management owed a fiduciary duty to the company's creditors;

(c) BLMIS Management breached that duty;

(d) the company's creditors were harmed by that breach; and

(e) the defendant was unjustly enriched as a result of the breach of duty by BLMIS Management.

(3) BLMIS Management was required to perform its duties in good faith and with that degree of care which an ordinarily prudent person in a like position would exercise under similar circumstances (see paragraph 9 above).

(4) Under New York law, once BLMIS became insolvent, BLMIS Management's fiduciary duties ran to the corporation's creditors.

(5) According to Madoff's plea allocution, the Ponzi scheme began at least as of the early 1990s, though upon information and belief the Ponzi scheme began much earlier. Consequently, BLMIS was insolvent at all relevant times.

(6) BLMIS Management had a fiduciary obligation to use the assets of the corporation for the benefit of BLMIS creditors once BLMIS became insolvent.

(7) BLMIS Management breached its fiduciary duty to BLMIS's creditors by making the Transfers to the Defendant since that action paid the Defendant with monies stolen from other investors and lowered the pool of money available to such other investors.

(8) The Defendant was unjustly enriched by the Transfers, which were made in breach of BLMIS Management's fiduciary duty to BLMIS's creditors. The Trustee is entitled to recover the Transfers, because those funds form a part of the pool of customer property to be equitably distributed to the victims of the Madoff fraud by the Trustee, who is uniquely empowered to do so as a matter of United States law.

(9) Accordingly, each requisite element to establish a constructive trust over the Defendant has been met as a matter of United States law.

23. Pursuant to the Trusts Law (2009 Revision), in determining the governing law of a constructive trust, and in the absence of express terms or evidence as to the intentions of the parties, regard is to be had to the 'other circumstances of the trust'.

24. In the circumstances of the instant case, the existence of a constructive trust is governed by the law of the United States, as demonstrated by (without limitation) the following facts and matters:

(1) BMLIS was incorporated in the USA.

(2) BLMIS carried on business in the USA.

(3) BLMIS is in liquidation in the USA.

(4) Madoff and the other directors of BLMIS were domiciled in the USA.

(5) The USA was the centre of gravity and focal point of the global activity of BLMIS.

(6) Defendant agreed that its account "shall be subject to the constitution, rules, regulations, customs and usages of the exchange or market, and its clearing house, if any, where the transactions are executed by the Broker [BLMIS]," and understood that BLMIS was executing such transactions from its office in New York. Defendant further agreed that the transactions being executed by BLMIS, "shall be subject (a) to the provisions of: (1) the Securities Exchange Act of 1934, as amended; and (2) the Commodities Exchange Act, as amended; and (b) the rules and regulations of (1) the Securities and Exchange Commission, (2) the Board of Governors of the Federal Reserve System and (3) the Commodities Futures Trading Commission."

(7) The Defendant knowingly and consistently wired funds to the '703 Account, which was an account at the New York branch of JP Morgan.

(8) Defendant knowingly wired funds to New York with the intent to profit from commercial activity it believed was taking place in that jurisdiction.

(9) The Transfers were made out of the '703 Account in New York.

(10) The wrongdoing of Madoff and the other directors of BLMIS occurred in the USA.

VIII. US Law Breach of Fiduciary Duty Claim

25. Further or alternatively, as a matter of US law, BLMIS is entitled to the restitution of the monies transferred to the Defendant because the Transfers were *void ab initio* as they took place in breach of BLMIS Management's fiduciary duty to BLMIS's creditors.

PARTICULARS OF US LAW

(1) Under New York law, transfers of property made in breach of a fiduciary duty are *void ab initio*.

(2) BLMIS Management owed a fiduciary duty to BLMIS's creditors once the company became insolvent. As pleaded at paragraphs 35(3) to 35(7) above, BLMIS Management breached that duty by transferring money to the Defendant when it should have been retained by BLMIS so that it could be appropriately distributed to its creditors.

(3) Since BLMIS Management breached its fiduciary duty by authorizing the Transfers, the Transfers are *void ab initio* under New York law.

(4) The appropriate remedy in cases of breaches of fiduciary duty is the restoration of the persons to whom such duty is owed to the position they would have occupied but for the breach of fiduciary duty. In the present case, that would require that the Transfers be voided and that the Defendant return any payments that it received in breach of BLMIS Management's fiduciary duty to BLMIS for distribution amongst its creditors.

(5) As addressed at paragraph 35(8) above, the Defendant was unjustly enriched by the Transfers, which were made in breach of BLMIS Management's fiduciary duty to BLMIS creditors. The Defendant was paid with other BLMIS customers' money. The Trustee is entitled to recover those monies, because those funds form a part of the pool of customer property to be equitably distributed by the Trustee to the victims of the Madoff fraud.

(6) Alternatively, the Defendant should disgorge the Transfers (or the remnants thereof) because it knew, or should have known, of BLMIS Management's breach of their fiduciary duty to BLMIS creditors.

IX. Cayman law preference claim

26. The payment of monies by BLMIS to the Defendant was a conveyance or transfer of property.

27. Further or alternatively, the payment of monies by BLMIS to the Defendant occurred pursuant to a payment obligation.

28. The said conveyance, transfer or payment obligation was made, incurred and/or suffered by BLMIS in favour of the Defendant.

29. The Defendant was, at the time of the said conveyance, transfer or payment obligation, a creditor of BLMIS.

30. The said conveyance, transfer or payment obligation was made, incurred and/or suffered at a time when BLMIS was unable to pay its debts within the meaning of section 93 of the Companies Law. The Trustee relies on the facts and matters more particularly pleaded above.

31. The said conveyance, transfer or payment obligation was made, incurred and/or suffered with a view to giving the Defendant a preference over the other creditors of BLMIS.

(1) The said conveyance, transfer or payment obligation did, as a matter of fact, give the Defendant a preference over the other creditors of BLMIS.

(2) Pending discovery and interrogatories herein, the Trustee relies on the inference that BLMIS intended to produce the natural and obvious consequences of its actions.

32. As pleaded above, the SIPA liquidation of BLMIS commenced on 15 December 2008.

33. The following payments (the "Six Month Payments") occurred within six months immediately preceding the commencement of the SIPA liquidation:

(1) US$ 120,000,000 on 27 June 2008.

(2) US$ 197,000,000 on 10 July 2008.

(3) US$ 147,000,000 on 3 September 2008.

(4) US$ 120,000,000 on 23 September 2008.

(5) US$ 40,000,000 on 30 September 2008.

(6) US$ 180,000,000 on 16 October 2008.

(7) US$ 10,000,000 on 22 October 2008.

(8) US$ 29,000,000 on 5 November 2008.

(9) US$ 46,000,000 on 9 December 2008.

34. By reason of the matters aforesaid, the Six Months Payments would be invalid, pursuant to section 145 of the Companies Law, if the liquidation of BLMIS were occurring in the Cayman Islands rather than in the USA.

35. At common law, this Court is entitled to apply section 145 of the Companies Law, or equivalent rules as a matter of common law, so as to provide for the Six Month Payments to be void.

36. As a result of the invalidity of the Six Month Payments, and in the alternative to the claims advanced above, the Trustee contends that the estate of BLMIS is the beneficial owner of the Credit Balance, which the Defendant should be ordered to pay to the Trustee, either pursuant to section 241(1)(e) of the Companies Law or at common law.

37. To the extent that the Credit Balance is insufficient to repay the Six Month Payments to the Trustee, the Trustee is entitled to judgment against the Defendant, in personam, for the shortfall.

X. Claim in personam for knowing receipt

38. Further or alternatively, by reason of the matters aforesaid, to the extent that the Credit Balance is less than the total amount of the Transfers, the Defendant is liable to pay damages and/or equitable compensation to the Trustee for knowing receipt.

39. The Trustee is entitled to and claims:

(1) interest pursuant to section 34 of the Judicature Law on such damages as may be awarded to the Trustee herein, at such rate and for such period as the Court thinks fit, alternatively.

(2) compound, alternatively simple, interest in equity on such equitable compensation as may be awarded to the Trustee herein, at such rate and for such period as the Court thinks fit.

AND THE CLAIMANT CLAIMS

(3) An order under section 241(1)(e) of the Companies Law requiring the Defendant to pay the Credit Balance (or such portion thereof as represents the traceable proceeds of the Transfers) to the Trustee.

(4) Alternatively, a declaration that the estate of BLMIS is beneficially entitled to the Credit Balance, together with an order requiring the Defendant to pay the same to the Trustee as the duly appointed representative of the estate of BLMIS.

(5) An order under section 145, alternatively at common law, requiring the Defendant to pay the Six Month Payments (as defined above) to the Trustee, together with judgment against the Defendant for any shortfall (*i.e.*, to the extent that the Credit Balance is insufficient to pay the Six Month Payments to the Trustee).

(6) Damages and/or equitable compensation.

(7) Interest as aforesaid.

(8) Further or other relief.

(9) Costs.

HIGGS & JOHNSON

23 November 2010

Attorneys for the Plaintiffs

This Statement of Claim was issued by Higgs & Johnson whose address for service is PO Box 866 George Town, Grand Cayman, KY1-1103 and Fifth Floor, Anderson Square Building, Shedden Road, George Town, Grand Cayman, Cayman Islands.

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

   After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495, George Town, KY1-1106, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

   If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

   If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

   If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

See over for notes for guidance

Please complete overleaf

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.

2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.

3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".

4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.

5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.

6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.

7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.

8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO FSD: 258 OF 2010

BETWEEN:

(1) IRVING H PICARD
(as trustee for the liquidation of the business of
Bernard L. Madoff Investment Securities LLC)

(2) BERNARD L. MADOFF INVESTMENT SECURITIES LLC
(in Securities Investor Protection Act liquidation)

Plaintiffs

- and -

HARLEY INTERNATIONAL (CAYMAN) LIMITED (in liquidation)

Defendant

ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)
☐ yes ☐ no

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box)
☐ yes ☐ no

Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for

Please complete overleaf

Notes on address for service

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by plaintiff's Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Higgs & Johnson
Attorneys-at-Law for the Plaintiff
5th Floor, Anderson Square Building
PO Box 866
Shedden Road
George Town
Grand Cayman, KY1-1103
Cayman Islands
Ref: 501744-000001

Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.