IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 0275 of 2010

BETWEEN:

(1) IRVING H PICARD
(AS TRUSTEE FOR THE LIQUIDATION OF THE BUSINESS OF BERNARD L. MADOFF INVESTMENT SECURITIES LLC (IN SECURITIES INVESTOR PROTECTOR ACT LIQUIDATION)

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

Plaintiff

And

PRIMEO FUND (IN OFFICIAL LIQUIDATION)

Defendant

WRIT OF SUMMONS

TO: PRIMEO FUND (in official liquidation) c/o Zolfo Cooper (Cayman) Limited, PO Box 1102 GT, Cayman Financial Centre, Bermuda House, Grand Cayman, Cayman Islands KY1-1102

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 9th day of December 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 hundreds of millions of dollars (the "Direct Transfers" and the "Indirect Transfers") from Bernard L Madoff Investment Securities LLC ("BLMIS") in connection with a fraud operated by Bernard L. Madoff ("Madoff").

In these proceedings the Plaintiff seeks an account and/or inquiry as to the whereabouts of the Direct Transfers and the Indirect Transfers and/or the traceable proceeds of the same.

Further, insofar as the Direct Transfers and the Indirect Transfers and/or the traceable proceeds of the same continue to stand to the Defendant's credit in any bank account (whether in the name of the Defendant or otherwise) (the "Credit Balance"), the Trustee makes a proprietary and/or personal claim against the Defendant in respect of the Credit Balance on the following grounds:

As a matter of US law, the Direct Transfers and/or the Indirect Transfers are avoidable so that the Credit Balance is customer property which is subject to recovery for the estate of BLMIS. The Trustee, who has been recognised by this Court as the foreign representative of BLMIS, seeks appropriate relief under sections 241 and 242 of the Companies Law (2010 Revision) ("the Companies Law") including an order under section 241(1)(c) of the Companies Law requiring the turnover of the Credit Balance. This Court should make such an order to give effect to the position under US law, either pursuant to Cayman choice of law rules or as a matter of discretion. An order requiring turnover of the Credit Balance is necessary and/or appropriate in accordance with the criteria contained in section 242 of the Companies Law (2010 Revision).

Further or in the further alternative, 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 BLMIS; 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.

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.

Further or in the further alternative, the Court should order the Defendant to pay the Credit Balance and/or such monetary sum as the Court thinks fit to the Trustee pursuant to section 145 of the Companies Law and/or at common law and/or under sections 241 and 242 of the Companies Law, in respect of receipts by the Defendant within the period of six months ending with the commencement of the liquidation of BLMIS ("the Six Month Payments").

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

Further or in the further alternative, the Plaintiff contends that the Court should make order under section 147, further or alternatively at common law, further or alternatively under sections 241 and 242 of the Companies Law, requiring the Defendant to contribute such sum as the Court thinks fit to the estate of BLMIS.

AND THE PLAINTIFF CLAIMS:

(1) An account and/or inquiry into the whereabouts of the Direct Transfers and the Indirect Transfers and the traceable proceeds of the same.

(2) An order under section 241(1)(e) of the Companies Law requiring the Defendant to pay the Credit Balance to the Trustee as the duly appointed representative of the estate of BLMIS.

(3) 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.

(4) An order under section 145, further or alternatively at common law, further or alternatively under sections 241 and 242 of the Companies Law, requiring the Defendant to pay the Six Month Payments (as defined above) or the traceable proceeds thereof 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).

(5) An order under section 147, further or alternatively at common law, further or alternatively under sections 241 and 242 of the Companies Law, requiring the Defendant to contribute such sum as the Court thinks fit to the estate of BLMIS.

(6) Damages and/or equitable compensation.

(7) Interest as aforesaid.

(8) Further or other relief.

(9) Costs.

Higgs & Johnson

Higgs & Johnson, attorneys for the Plaintiffs

THIS WRIT 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.

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IN THE GRAND COURT OF THE CAYMAN ISLANDS **Cause No. FSD of 2010**
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

PRIMEO FUND (IN OFFICIAL 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 open-ended investment fund with limited liability organised under the laws of the Cayman Islands, with registered office at Zolfo Cooper (Cayman) Limited, PO Box 1102 GT, Cayman Financial Centre, Bermuda House, Grand Cayman, Cayman Islands.

4. On 23 January 2009, the Defendant was placed into voluntary liquidation in the Cayman Islands and Richard E Fogerty and G James Cleaver were appointed as liquidators (the "Liquidators").

5. On 8 December 2010, Mr Justice Andrew Jones QC gave the Trustee permission to commence these proceedings against the Defendant.

II. Overview

6. As is more particularly pleaded below, this claim relates to the Defendant's receipt of sums amounting to more than US$145 million directly from BLMIS ("the Direct Transfers"), together with any further funds received by the Defendant indirectly from BLMIS via intermediary feeder funds ("the Indirect Transfers") in connection with the fraud operated by Madoff.

7. In these proceedings, the Plaintiffs seek an account and/or inquiry as to the whereabouts of the Direct Transfers and the Indirect Transfers and/or the traceable proceeds of the same.

8. For the avoidance of doubt, the Trustee is not asserting a proprietary claim to monies to be released to the Liquidators from HSBC Bank plc pursuant to the agreement dated 23 July 2010 between the Trustee and HSBC Bank plc and the related release from the Joint Liquidators that was approved by the Bankruptcy Court for the Southern District of New York on 7 October 2010 and the Grand Court of the Cayman Islands on 13 October 2010.

9. Insofar as the Direct Transfers and the Indirect Transfers and/or the traceable proceeds of the same continue to stand to the Defendant's credit in any bank account (whether in the name of the Defendant or otherwise) (the "Credit Balance"), the Trustee makes a proprietary claim against the Defendant on the following grounds:

(1) As a matter of US law, the Direct Transfers and/or the Indirect Transfers are avoidable so that the Credit Balance is property which is subject to recovery for the estate of BLMIS. The Trustee, who has been recognised by this Court as the foreign representative of BLMIS, seeks an appropriate relief under sections 241 and 242 of the Companies Law (2010 Revision) ("the Companies Law") including an order under section 241(1)(e) of the Companies Law requiring the turnover of the Credit Balance. This Court should make such an order to give effect to the position under US law, either pursuant to Cayman choice of law rules or as a matter of discretion. An order requiring turnover of the Credit Balance is necessary and/or appropriate in accordance with the criteria contained in section 242 of the Companies Law.

(2) Further or in the further alternative, 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 BLMIS; 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.

(3) 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.

(4) Further or in the further alternative, the Court should order the Defendant to pay the Credit Balance to the Trustee pursuant to section 145 of the Companies Law and/or at common law and/or under sections 241 and 242 of the Companies Law.

10. Further, in relation to monies that the Defendant received directly or indirectly from BLMIS but has since dissipated, the Trustee makes a personal claim against the Defendant for damages or equitable compensation for knowing receipt. Further or in the further alternative, the Plaintiffs contend that Court should make order under section 147, further or alternatively at common law, further or alternatively under sections 241 and 242 of the Companies Law, requiring the Defendant to contribute such sum as the Court thinks fit to the estate of BLMIS.

III. Factual Background

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

12. 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.

13. 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.

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

15. 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.

16. In reality, as is 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 known colloquially 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 xxxxxxxxxxxx703 (the "'703 Account"). Madoff and his associates used this account as though it was their own personal bank account.

(2) The purported investment "returns" paid to investors by BLMIS were nothing more than payments made from new funds paid into the scheme by new and existing investors. The same was 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 is 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 purportedly would be invested in United States government-issued securities or Fidelity money market funds.

(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 these trades were not material and were not related to split-strike accounts, such as the 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 is 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 reasonably could 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 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 to investors monies which Madoff represented to be "profits". Such "profits" were fictitious and Madoff's representations were false. No profits ever were 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. 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 purported that clients of BLMIS had approximately $65 billion invested with BLMIS. In reality, BLMIS had assets on hand worth only a small fraction of that amount.

(14) Madoff represented to clients and regulators that BLMIS conducted trades after hours on the over-the-counter market. 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 with the US regulator as an Investment Advisor until August 2006, when it was forced to by the United States Securities and Exchange Commission ("SEC"). 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 2008, BLMIS had over 4,900 active customer accounts, and had falsified customer account statements with a recorded value of client assets under management of approximately $65 billion.

(16) Madoff also procured the preparation of false audit reports by Freihling & 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 violations 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 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 "Filing Date"), 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 the 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 Protective Decree, removed the Receiver 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 accordingly is duly qualified as a matter of United States federal law to serve as trustee of BLMIS in the liquidation and to act on behalf of the estate of BLMIS.

IV. Direct Transfers

17. At all material times, the Defendant was a client of the IA Business or a major investor in other entities that were clients of the IA Business.

18. According to BLMIS's records, on or around 1 March 1996, the Defendant 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.

19. The Account Agreements signed by BLMIS and the Defendant stated that all transactions would be subject to the Securities Exchange Act 1934, the Commodities Exchange Act, the rules and regulations of the SEC, the Board of Governors of the Federal Reserve System and the Commodities Futures Trading Commission and all law of the United States. The Defendant voluntarily agreed to be bound by the Account Agreements and subject to these laws.

20. The account opened and maintained with BLMIS as a result of the Account Agreements was designated 1FN092 (the "Primeo Account"). That account, however, by and large was a fiction. Substantially all monies invested into BLMIS's IA Business were comingled into the 703 Account.

21. The Defendant also operated a separate account with BLMIS that was designated 1FN060 (the "First Primeo Account"). This account was opened in December 1993 and closed in April 2000. For the avoidance of doubt, given the date of the closure of the First Primeo Account, no claims under Cayman law in relation to monies paid into or out of the First Primeo Account are being asserted in these proceedings.

22. The Primeo Account was closed on or about 26 June 2007 and all monies remaining in the Primeo Account were internally transferred within BLMIS to the BLMIS account of Herald Fund SPC ("Herald"), an exempted segregated portfolio company organised under the laws of the Cayman Islands. Herald was another feeder fund which invested in BLMIS through an account set up in 2004. As a result of the transfer of the funds in the Primeo Account to Herald, the Defendant became Herald's single largest investor.

23. From 26 June 2007 onward, any further investments made by the Defendant's customers were invested into either Herald or Alpha Prime Fund Limited ("Alpha Prime"), an investment partnership fund organised under the laws of Bermuda which also invested in BLMIS through an account set up in 2003.

24. Between 1 March 1996 and the Filing Date, the Defendant directly "invested" in excess of US$ 370 million with BLMIS via 86 separate wire transfers into the 703 Account. The Defendant was one of many such "investors" with BLMIS whose funds were commingled in the 703 Account.

25. Between December 2006 and 26 June 2007 (the date on or about which the Primeo Account was closed), BLMIS wired the following amounts on the following dates from the 703 Account to or for the benefit of the Defendant:

(1) $3,500,000 on or about 29 December 2006

(2) $10,900,000 on or about 1 February 2007

(3) $1,000,000 on or about 3 April 2007

26. Additionally, between December 2006 and 26 June 2007, BLMIS withdrew funds from the Primeo Account on 70 occasions to make tax payments to the appropriate tax authorities on behalf of the Defendant totalling $709,154. These withdrawals, together with the above transfers, totalled approximately $16.1 million and took place within two years of the Filing Date (collectively the "2 Year Transfers").

27. Between 11 December 2002 and 11 December 2006, BLMIS wired the following amounts on the following dates from the 703 Account to or for the benefit of the Defendant:

(1) $6,500,000 on or about 23 July 2004

(2) $1,700,000 on or about 2 August 2004

(3) $2,000,000 on or about 3 September 2004

(4) $1,500,000 on or about 4 October 2004

(5) $4,000,000 on or about 3 March 2005

(6) $10,000,000 on or about 1 June 2005

(7) $17,250,000 on or about 1 July 2005

(8) $8,000,000 on or about 30 September 2005

(9) $38,600,000 on or about 3 November 2005

(10) $12,850,000 on or about 5 December 2005

(11) $5,000,000 on or about 1 March 2006

(12) $5,500,000 on or about 3 July 2006

(13) $2,000,000 on or about 2 August 2006

(14) $2,800,000 on or about 21 September 2006

(15) $5,350,000 on or about 3 November 2006

(16) $1,000,000 on or about 5 December 2006

28. Additionally, between 11 December 2002 and 11 December 2006, BLMIS withdrew funds from the Primeo Account on 448 occasions to make tax payments to the appropriate tax authorities on behalf of the Defendant totalling $4,867,793. These withdrawals, together with the above transfers and the Two Year Transfers, totalled approximately $144.9 million and were made during the six years prior to the Filing Date (collectively the "6 Year Transfers").

V. Indirect Transfers

29. In addition to transfers received directly from BLMIS (described above), the Defendant invested in and received transfers from Herald and Alpha Prime, which transfers likely derived in whole or in part from money obtained from BLMIS.

30. It is possible that the Defendant invested in Alpha Prime prior to 26 June 2007; however, this information is not currently available to the Trustee and may only become available during discovery or following an order for account and/or inquiry.

31. Between 26 June 2007 and the Filing Date, BLMIS wired the following amounts on the following dates from the 703 Account to Herald:

(1) $20,000,000 on or about 9 January 2008

(2) $113,000,000 on or about 2 October 2008

(3) $423,000,000 on or about 4 November 2008

32. Between 26 June 2007 and the Filing Date, BLMIS wired the following amounts on the following dates from the 703 Account to Alpha Prime:

(1) $4,500,000 on or about 4 September 2007

(2) $4,000,000 on or about 25 October 2007

(3) $11,000,000 on or about 3 January 2008

(4) $3,500,000 on or about 2 September 2008

(5) $10,000,000 on or about 27 October 2008

(6) $38,800,000 on or about 3 November 2008

33. The monies transferred by BLMIS to Herald and Alpha Prime in the 90 day period prior to the Filing Date are hereinafter referred to as the "Herald 90 Day Transfers" and the "Alpha Prime 90 Day Transfers" respectively. These transfers are avoidable and recoverable by the Trustee from Herald and Alpha Prime pursuant to sections 547(b), 550(a)(1) and 551 of the Bankruptcy Code and SIPA section 78fff-2(c)(3).

34. The monies transferred by BLMIS to Herald and Alpha Prime in the two year period prior to the Filing Date are hereinafter referred to as the "Herald 2 Year Transfers" and the "Alpha Prime 2 Year Transfers" respectively. These transfers are avoidable and recoverable by the Trustee from Herald and Alpha Prime pursuant to sections 548(a)(1), 550(a)(1) and 551 of the Bankruptcy Code and SIPA section 78fff-2(c)(3).

35. The Defendant was a recipient of some or all of the Herald 90 Day Transfers and the Alpha Prime 90 Day Transfers. Any such transfers made by Herald and/or Alpha Prime to the Defendant are hereinafter referred to as the "90 Day Subsequent Transfers".

36. The Defendant was a recipient of some of the Herald 2 Year Transfers and/or the Alpha Prime 2 Year Transfers. Monies received by Herald or Alpha Prime on or after 26 June 2007, the date on which the Primeo Account was closed, and which were subsequently transferred to the Defendant are hereinafter referred to as the "2 Year Subsequent Transfers".

37. The Two Year Transfers, the Six Year Transfers, the Herald 90 Day Transfers, the Alpha Prime 90 Day Transfers, the Herald 2 Year Transfers, the Alpha Prime 2 Year Transfers, the 90 Day Subsequent Transfers and the 2 Year Subsequent Transfers are referred to collectively as the "Transfers".

38. Prior to the service of the Defendant's Defence and discovery herein, Trustee is not able to identify the exact dates on which transfers were made by Herald or Alpha Prime to the Defendant or the extent of those transfers.

39. Herald and/or Alpha Prime received transfers from BLMIS as a result of redemption requests made by their own investors. The Defendant was one of the largest, if not the largest, investor in Herald and Alpha Prime. Consequently, prior to the service of the Defendant's Defence and discovery herein, the Trustee will invite the Court to infer that the proximate cause of and rationale for the Herald and Alpha Prime 90 Day Transfers and the Herald and Alpha Prime 2 Year Transfers consisted of redemption requests from the Defendant and that a material proportion of the Herald and Alpha Prime 90 Day Transfers and the Herald and Alpha Prime 2 Year Transfers were subsequently transferred to the Defendant.

VI. Relief under sections 241 and 242

40. BLMIS is a *"debtor"* as defined by section 240 of the Companies Law.

41. The SIPA liquidation of BLMIS is a *"foreign bankruptcy proceeding"* as defined by section 240 of the Companies Law.

42. The Trustee is a *"foreign representative"* of BLMIS as defined by section 240 of the Companies Law.

43. On 5 February 2010, Mr Justice Andrew Jones QC made an order (as amended) under section 241(1)(a) of the Companies Law recognising the right of the Trustee to act in the Islands on behalf of or in the name of BLMIS.

44. As a matter of US law, the Direct Transfers and the Indirect Transfers are avoidable so that the same (or the traceable proceeds of the same) are property of BLMIS which the Defendant is required to pay to the Trustee.

PARTICULARS OF US LAW

a. The 2 Year Transfers were made by BLMIS with the actual intent to hinder, delay or defraud some or all of BLMIS's then existing or future creditors. The 2 Year Transfers constitute fraudulent transfers avoidable by the Trustee pursuant to section 548(a)(1)(A) of the Bankruptcy Code and recoverable from the Defendant pursuant to section 550(a). As a result of the foregoing, pursuant to sections 548(a)(1)(A), 550(a) and 551 of the Bankruptcy Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the 2 Year Transfers, (b) directing that the 2 Year Transfers be set aside, and (c) recovering the 2 Year Transfers, or the value thereof, from the Defendant for the benefit of the estate of BLMIS.

b. Further or alternatively, BLMIS received less than a reasonably equivalent value in exchange for each of the 2 Year Transfers. At the time of each of the 2 Year Transfers, BLMIS was insolvent, or became insolvent as a result of the 2 Year Transfer in question. At the time of each of the 2 Year Transfers, BLMIS was engaged in a business or transaction, or was about to engage in a business or a transaction, for which any property remaining with BLMIS was an unreasonably small capital. At the time of each of the 2 Year Transfers, BLMIS intended to incur, or believed that it would incur, debts that would be beyond BLMIS's ability to pay as such debts matured. The 2 Year Transfers constitute fraudulent transfers avoidable by the Trustee pursuant to section 548(a)(1)(B) of the Bankruptcy Code and recoverable from the Defendant pursuant to section 550(a). As a result of the foregoing, pursuant to sections 548(a)(1)(B), 550(a) and 551 of the Bankruptcy Code, the Trustee is entitled to a judgment: (a) avoiding and preserving the 2 Year Transfers, (b) directing that the 2 Year Transfers be set aside, and (c) recovering the 2 Year Transfers, or the value thereof, from the Defendant for the benefit of the estate of BLMIS.

c. Further or alternatively, at all times relevant to the 6 Year Transfers, there has been one or more creditors who have held and still hold matured or un-matured unsecured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code, or that were and are not allowable only under section 502(e). The 6 Year Transfers were made by BLMIS with the actual intent to hinder, delay or defraud the creditors of BLMIS. BLMIS made the 6 Year Transfers to or for the Defendant in furtherance of a fraudulent investment scheme. As a result of the foregoing, pursuant to sections 276, 276-a, 278 and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a) and 551 of the Bankruptcy Code, and section 78fff-2(c)(3) of SIPA, the Trustee is entitled to a judgment: (a) avoiding and preserving the 6 Year Transfers, (b) directing that the 6 Year Transfers be set aside, (c) recovering the 6 Year Transfers, or the value thereof, from the Defendant for the benefit of the estate of BLMIS.

d. Further or alternatively, at all times relevant to the 6 Year Transfers, there were and are at least one or more creditors who held and hold matured or un-matured secured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code or that were not and are not allowable only under section 502(e). BLMIS did not receive fair consideration for the 6 Year Transfers, and BLMIS was insolvent at the time it made each of the 6 Year Transfers. As a result of the foregoing, the Trustee is entitled to a judgment pursuant to sections 273, 278 and/or 279 of the New York Debtor and Creditor Law and sections 544(b), 550 and 551 of the Bankruptcy Code and section 78fff-2(c)(3) of SIPA: (a) avoiding and preserving the 6 Year Transfers, (b) directing that the 6 Year Transfers be set aside, and (c) recovering the 6 Year Transfers, or the value thereof, for the benefit of the estate of BLMIS.

e. Further or alternatively, at all times relevant to the 6 Year Transfers, there were and are at least one or more creditors who held or hold matured or un-matured unsecured claims against BLMIS that were and

are allowable under section 502 of the Bankruptcy Code or that were not and are not allowable only under section 502(e). BLMIS did not receive fair consideration for each of the 6 Year Transfers. At the time BLMIS made each of the 6 Year Transfers, BLMIS was engaged in or about to engage in a business or transaction for which the property remaining in its hands after each of the 6 Year Transfers was an unreasonably small capital. As a result of the foregoing, pursuant to sections 274, 278 and/or 279 of the New York Debtor and Creditor Law and sections 544(b) and 550(a) of the Bankruptcy Code and section 78fff-2(c)(3) of SIPA, the Trustee is entitled to a judgment: (a) avoiding and preserving the 6 Year Transfers, (b) directing that the 6 Year Transfers be set aside, and (c) recovering the 6 Year Transfers, or the value thereof, from the Defendant for the benefit of the estate of BLMIS.

f. Further or alternatively, at all relevant times, there were and are at least one or more creditors who held and hold matured or un-matured secured claims against BLMIS that were and are allowable under section 502 of the Bankruptcy Code, or that were not and are not allowable only under section 502(e). BLMIS did not receive fair consideration for the 6 Year Transfers. At the time BLMIS made each of the 6 Year Transfers, BLMIS had incurred, was intending to incur, or believed that it would incur debts beyond its ability to pay as the debts matured. As a result of the foregoing, pursuant to sections 275, 278 and/or 279 of the New York Debtor and Creditor Law, sections 544(b), 550(a) and 551 of the Bankruptcy Code and section 78fff-2(c)(3) of SIPA, the Trustee is entitled to a judgment: (a) avoiding and preserving the 6 Year Transfers, (b) directing that the 6 Year Transfers be set aside, and (c) recovering the 6 Year Transfers, or the value thereof, from the Defendant for the benefit of the estate of BLMIS.

g. Further or alternatively, at the time of each of the Herald 90 Day Transfers and the Alpha Prime 90 Day Transfers, Herald and Alpha Prime were each a "creditor" of BLMIS within the meaning of section

101(10) of the Bankruptcy Code and pursuant to SIPA § 78fff-2(c)(3). Each of the Herald 90 Day Transfers and the Alpha Prime 90 Day Transfers constitutes a transfer of an interest of BLMIS in property within the meaning of section 101(54) of the Bankruptcy Code and pursuant to SIPA § 78fff-2(c)(3). Each of the Herald 90 Day Transfers and the Alpha Prime 90 Day Transfers was to or for the benefit of Herald and Alpha Prime respectively. Alternatively, each of the Herald 90 Day Transfers and the Alpha Prime 90 Day Transfers was made on account of an antecedent debt owed by BLMIS before such transfer was made. Each of the Herald 90 Day Transfers and the Alpha Prime 90 Day Transfers was made while BLMIS was insolvent. Each of the Herald 90 Day Transfers and the Alpha Prime 90 Day Transfers was made during the preference period under section 547(b)(4) of the Bankruptcy Code. Each of the Herald 90 Day Transfers and the Alpha Prime 90 Day Transfers enabled Herald and Alpha Prime, respectively, to receive more than it would have received if (1) this was a case under Chapter 7 of the Bankruptcy Code; (ii) the transfers had not been made; and (iii) Herald or Alpha Prime received payment of such debt to the extent provided by the provisions of the Bankruptcy Code. Each of the Herald 90 Day Transfers and the Alpha Prime 90 Day Transfers constitutes a preferential transfer avoidable by the Trustee pursuant to section 547(b) of the Bankruptcy Code and is recoverable from the Herald and Alpha Prime, respectively, pursuant to section 550(a) of the Bankruptcy Code. The Trustee has filed a lawsuit against both Herald and Alpha Prime to avoid the Herald 90 Day Transfers and the Alpha Prime 90 Day Transfers pursuant to section 547 of the Bankruptcy Code and to recover the Herald 90 Day Transfers and the Alpha Prime 90 Day Transfers from Herald and Alpha Prime respectively pursuant to section 550(a)(1) of the Bankruptcy Code. The Defendant was an immediate or mediate transferee of some portion of the Herald 90 Day Transfers and the Alpha Prime 90 Day Transfers pursuant to section 550(a)(2) of the Bankruptcy Code. The Herald 90 Day Transfers and the Alpha Prime 90 Day Transfers that were subsequently transferred to the Defendant are hereinafter referred to as the "90 Day Subsequent

Transfers". The Defendant did not take the 90 Day Subsequent Transfers for value, in good faith, or without knowledge of the voidability of the 90 Day Subsequent Transfers. As a result of the foregoing, the Trustee is entitled to a judgment pursuant to sections 547(b), 550 and 551 of the Bankruptcy Code: (a) avoiding and preserving the 90 Day Subsequent Transfers, (b) directing that the 90 Day Subsequent Transfers be set aside, and (c) recovering the 90 Day Subsequent Transfers, or the value thereof, for the benefit of the estate of BLMIS.

h. Further or alternatively, the Herald 2 Year Transfers and the Alpha Prime 2 Year Transfers were made by BLMIS with the actual intent to hinder, delay and defraud some or all of BLMIS's then existing or future creditors. Each of the Herald 2 Year Transfers and the Alpha Prime 2 Year Transfers constitutes a fraudulent transfer avoidable by the Trustee pursuant to section 548(a)(1)(A) of the Bankruptcy Code and recoverable from the Defendant pursuant to section 550(a)(2) and SIPA §§ 78fff-2(c)(3). The Trustee has filed a lawsuit against Herald and Alpha Prime to avoid the Herald Two 2 Transfers and the Alpha Prime 2 Year Transfers pursuant to section 548(a)(1)(A) of the Bankruptcy Code, and to recover the Herald 2 Year Transfers and the Alpha Prime 2 Year Transfers pursuant to section 550(a)(1) of the Bankruptcy Code. The Defendant was an immediate or mediate transferee of some portion of the Herald 2 Year Transfers and the Alpha Prime 2 Year Transfers pursuant to section 550(a)(2) of the Bankruptcy Code. The Herald 2 Year Transfers and the Alpha Prime 2 Year Transfers that were subsequently transferred to the Defendant are hereinafter referred to as the "2 Year Subsequent Transfers". The Defendant did not take the 2 Year Subsequent Transfers for value, in good faith, or without knowledge of the voidability of the Herald 2 Year Transfers and the Alpha Prime 2 Year Transfers. As a result of the forgoing, pursuant to sections 548(a)(1)(A), 550(a)(2) and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3), the Trustee is entitled to a judgment: (a) avoiding and preserving the 2 Year Subsequent

Transfers, (b) directing that the 2 Year Subsequent Transfers be set aside, and (c) recovering the 2 Year Subsequent Transfers, or the value thereof, from the Defendant for the benefit of the estate of BLMIS.

This Court's jurisdiction to order turnover

45. On 15 July 2009 the Trustee commenced proceedings against the Defendant by filing a complaint against it in the United States Bankruptcy Court for the Southern District of New York, which complaint asserted the claims under US law particularised above (the "Complaint").

46. On 20 July 2009 the Trustee's counsel in the Islands served the Complaint upon the Defendant in accordance with Bankruptcy Rule 7004(b) of the Federal Rules of Bankruptcy Procedure.

47. The Defendant failed to filed an answer, move, or otherwise respond on or before the deadline of 15 August 2009, and the time for doing so has not been extended. A default was entered against the Defendant on 1 September 2009.

48. For the following reasons, the Direct Transfers and/or Indirect Transfers are avoidable so that the Credit Balance is property belonging to BLMIS, and this Court has jurisdiction to make an order requiring the Defendant to turn the Credit Balance over to the Trustee.

Application of US law to the Defendant's bankruptcy

49. As a matter of Cayman choice of law rules, the liquidation of BLMIS and the collection, realisation and distribution of assets belonging to BLMIS in that liquidation are governed by US law.

50. Therefore, in order to determine whether or not the Direct Transfers and Indirect Transfers are avoidable so that the Credit Balance is property belonging to BLMIS, this Court must apply US law.

51. According to the US law set out above, the Direct Transfers and/or the Indirect Transfers are avoidable so that the Credit Balance is property belonging to BLMIS which forms part of the estate of BLMIS. This Court should therefore grant appropriate relief under sections 241 and 242 of the Companies Law including an order for the turnover of the Credit Balance to the Trustee.

Choice of US law in the exercise of discretion

52. Further or alternatively, for the purpose of determining whether or not the Direct Transfers and Indirect Transfers are avoidable so that the Credit Balance is property belonging to BLMIS, this Court is able to choose in the exercise of its discretion whether to apply US law or Cayman law. For the following reasons, the Trustee requests this Court to apply US law to determine this issue:

(1) BLMIS was incorporated in the US.

(2) BLMIS carried on business in the US.

(3) BLMIS is now in liquidation in the US.

(4) Madoff was, and still is, domiciled in the US.

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

(6) The Account Agreements, by their terms, were deemed to be entered into in the State of New York.

(7) The Account Agreements were to be performed in New York through securities trading activity that would take place in New York.

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

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

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

(11) The wrongdoing of Madoff and the other directors of BLMIS occurred in the US.

The exercise of this Court's discretion to order turnover

53. For the following reasons, the Trustee requests the Court to exercise its discretion in favour of granting appropriate relief under sections 241 and 242 of the Companies Law including an order under section 241(1)(e) requiring the Defendant to turn the Credit Balance over to the Trustee for distribution in the estate of BLMIS:

(1) The turnover of the Credit Balance to the Trustee will best assure an economic and expeditious administration of the BLMIS estate.

(2) The turnover of the Credit Balance to the Trustee will be consistent with the just treatment of all holders of claims against or interests in the BLMIS estate, wherever they may be domiciled, and consistent with SIPA and the applicable distribution scheme.

(3) The turnover of the Credit Balance to the Trustee will be consistent with the protection of claim holders in the Islands against prejudice

and inconvenience in the processing of claims in the foreign bankruptcy proceeding.

(4) The turnover of the Credit Balance to the Trustee will be consistent with the prevention of preferential or fraudulent dispositions of property comprising the BLMIS estate.

(5) The turnover of the Credit Balance to the Trustee will be consistent with the distribution of the BLMIS estate amongst creditors substantially in accordance with the order prescribed by Part V of the Companies Law.

(6) The turnover of the Credit Balance to the Trustee will be consistent with the recognition and enforcement of security interests created by BLMIS.

(7) The turnover of the Credit Balance to the Trustee will be consistent with the non-enforcement of foreign taxes, fines and penalties.

(8) The turnover of the Credit Balance to the Trustee will be consistent with the requirements of comity.

VII. Cayman law constructive trust claim

54. The 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 Direct Transfers and the Indirect 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 Direct Transfers and/or the Indirect Transfers, the BLMIS Management failed to exercise reasonable care, skill and diligence and/or were driven by the criminal, dishonest and fraudulent motives and intentions which lay behind the fraud itself.

55. Further or alternatively, the Direct Transfers and/or the Indirect 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.

56. The Defendant received each and all of the Direct Transfers and/or the Indirect Transfers with knowledge, alternatively constructive knowledge, of the matters pleaded in paragraphs 54 to 55 above and/or it was and is unconscionable for the Defendant to obtain or assert any beneficial interest in the Direct Transfers and/or the Indirect Transfers. Pending the service of the Defendant's Defence and discovery herein, 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, and/or about which the Defendant, as a sophisticated investor, ought reasonably to have known and 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's 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.

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 purported to initiate and execute 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 used outmoded technology, providing printed account statements and paper trading confirmations that were sent via US mail to feeder funds, like the Defendant, and/or their managers. This was so despite the fact that Madoff was known throughout the industry as 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 the Defendant. BLMIS, which had tens of billions of dollars under management, was audited not by one of the major audit firms, but by Freihling & Horowitz CPAs P.C. ("F&H"), a three-person accounting firm. Of the two accountants at the firm, one was semi-retired and lived 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 U.S. accounting firms that conduct audits must enrol 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 had 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 did so in a highly suspicious manner, particularly given the supposed 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. The Form 13F requires disclosure of the names of institutional investment managers, the names and class of the securities they manage, 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 quarterly reporting period, Madoff purportedly moved customer funds "out of the market" in order 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 warning signs that called for increased due diligence. However, 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 Madoff or BLMIS by name in placement memoranda or marketing materials. When an investor sought further insight into the IA Business's structure and practice, Madoff typically blocked access and threatened 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's managers a powerful incentive to ignore the large number of major warning signs. Contrary to industry standards, Madoff did not charge the Defendant a management or performance fee, and instead allowed the Defendant's managers to pocket such fees. Madoff purported to be satisfied with simply earning trading commissions for every share or option traded – by all accounts an extraordinarily generous and highly unusual gesture. By contrast, the Defendant's managers, whose only function, effectively, was to funnel money to BLMIS, received substantial 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 hundreds of millions of 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 1996 until 2007, the Defendant's annual returns for its account 1FN092 with BLMIS averaged 13.8 percent. In and of itself, this average rate of return is unremarkable. But this rate of return was achieved with only 8 months of negative returns during this 139-month period of reported operations from March 1996 through November 2007. Similarly from at least 1993 until 2000, the Defendant's annual returns for its account 1FN060 with BLMIS averaged 12.56 percent with no months of negative returns. Such returns have no correlation with the historical fluctuations of the S&P 100 Index, on which the 1A Business's trading activity supposedly was based. It simply is not possible to achieve such a consistent pattern of profitability, even in market downturns, without cheating. As is set forth in the table below for the Primeo Account, the consistency of the rates of return in the face of major market downturns is facially improbable.

Primeo Account 1FN092

Year	Rate of Return	S&P 100 Index Rate of Return
1996	15.0%	22.88%
1997	18.7%	27.677%
1998	16.6%	31.33%
1999	18.3%	31.26%
2000	**14.5%**	(13.42%)
2001	**13.7%**	(14.88%)
2002	**12.3%**	(23.88%)
2003	10.9%	23.84%
2004	10.0%	4.45%
2005	**10.6%**	(0.92%)
2006	13.4%	15.86%
2007	12.0%	3.82%

(11) The Defendant's BLMIS accounts were effectively immune from any number of market catastrophes, purportedly enjoying consistent, steady rates of return at times when the rest of the market was experiencing financial crises. Even in the face of the bursting of the dotcom bubble in 2000 and the September 11th tragedy in 2001, the split-strike strategy implausibly produced consistently positive returns despite extraordinary market volatility. 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%.

(12) Even more improbable was Madoff's near-perfect market timing: the funds virtually never were "in the market" during adverse market events, and almost always in the market as it rallied. Such incredible market timing is possible only with the benefit of hindsight, yet the Defendant never properly investigated Madoff's trading strategy.

c. BLMIS engaged in impossible options transactions on the Account

(13) The implementation of Madoff's split-strike strategy required continuous execution of large numbers of S&P 100 Index put and call options. BLMIS purportedly purchased S&P 100 Index options with the same purchase date, strike price, and expiration traded on the Chicago Board Options Exchange ("CBOE") (" S&P 100 Index Options") — in combination with purchases of select underlying stocks that are components of the S&P 100 Index.

(14) Madoff originally claimed to purchase the options on the CBOE. When questioned by some investors he changed his story and said the options were purchased on the after-hours over-the-counter market. However, the trade confirmations provided to Defendant indicated the purported options trades occurred on the CBOE, showing CUSIP numbers corresponding to the trade (which would appear only in trades executed on the CBOE). Using even the most conservative estimate of Madoff's assets under management ("AUM"), there were not enough options in the world, let alone the CBOE, to hedge a fund the size of Madoff's IA business. The sheer volume of the purported options trading on its account alone warranted further investigation by a sophisticated financial entity, such as the Defendant.

(15) On numerous occasions, the option volume related to options contracts BLMIS reported to its customers exceeded—by many hundreds and even thousands of times—the total volume of contracts for S&P 100 Index Options with the same purchase date, strike price and expiration traded on the CBOE.

(16) The statements for the Primeo Account indicate that, on three separate occasions (18 October 2001, 19 February 2003, and 20 February 2003), BLMIS purported to purchase a certain number of

option contracts. However, publicly available market data indicates that, on those dates, no options with the same purchase date, strike price and expiration were traded on the CBOE.

(17) In addition to reporting options trading activity that literally was impossible, BLMIS reported options trading on the Primeo Account that was, at the very least, implausible. On 19 February 2003, for instance, BLMIS purported to purchase 1,418 Put option contracts (with a February expiration and a strike price of 455). However, on 19 February 2003, only five Put options with the same purchase date, strike price and expiration were traded on the CBOE. In other words, BLMIS reported options trading activity that was 353 times greater than the CBOE volume.

(18) BLMIS purported to engage in 808 options transactions on the Primeo Account. Of these purported options transactions, 278 exceeded the daily CBOE market volume of those options. In other words, the Defendant chose to ignore the readily apparent red flag that 34.4% of all options transactions purportedly entered into on its BLMIS account exceeded the daily CBOE market volume.

d. The Defendant frequently had negative cash balances with BLMIS

(19) On numerous occasions, the Defendant's accounts with BLMIS had a negative balance because Madoff purported to purchase equities before selling put options before selling the corresponding call options, the sale of which was to finance the purchase of the put options as per the split-strike strategy. Typically, when a customer purchases assets prior to cash being available in the customer's account, the customer is buying on "margin" and would expect to be charged margin interest because buying on margin effectively is a loan from the investment advisor and/or broker dealer fronting the money. Strangely, Madoff never charged the funds any margin

interest for his extensions of credit, effectively foregoing potentially millions of dollars in payments.

(20) On 22 separate occasions, the First Primeo Account reflected cash balances with BLMIS that had a negative value. For example, over a fourteen-day period in March 1998, the Defendant had an average negative balance of $133,800. On July 20, 1998, the Defendant had a negative balance of $181,039. There was a total of 89 days for which Madoff could have charged the Defendant margin interest, but opted not to do so.

(21) On 129 separate occasions, the Primeo Account reflected cash balances with BLMIS that had a negative value. For example, over a fourteen-day period in November 2005, the Defendant had an average negative balance of $39,786,011. On one occasion in January 2006, the Defendant had a negative balance of $78,329,845. There was a total of 573 days for which Madoff could have charged the Defendant margin interest, but opted not to do so.

(22) The Defendant never questioned this bizarre practice.

e. Madoff engaged in options transactions inconsistent with the split-strike strategy, leaving the Defendant dangerously exposed

(23) As is discussed above, the implementation of Madoff's split-strike strategy involved the purchase of a basket of S&P 100 equities while, and at the same time, hedging that investment by executing S&P 100 index put and call options. However, the account statements that the Defendant received frequently showed options activity that involved short-term, one-sided trades that did not hedge any investment in equities, and were thus inconsistent with the split-strike strategy. These non-hedging options trades created a risky exposure for the Defendant if the market moved the other way, and should have been a glaring red flag to any sophisticated financial

entity, such as the Defendant, who should have inquired as to the purpose of the trades.

f. Madoff's hedging options transactions were often unbalanced

(24) In order for Madoff's split-strike strategy to work properly, the hedging options needed to correspond with the equities that he purchased. In accordance with his description of the split-strike strategy, Madoff should have purchased and sold equities as a basket, but if there were any subsequent changes in the equities in Madoff's basket, then such alterations should have dictated corresponding changes in the hedging options. However, the Defendant's BLMIS account statements and trade confirmations indicate that, on at least 21 separate occasions, Madoff did not make changes to the corresponding hedges when he purportedly sold one equity before the rest of the basket. Such "unbalanced hedges" are inconsistent with the split-strike strategy and should have caused the Defendant to inquire about the deviations from the strategy.

(25) One such unbalanced hedge is evident on the January and February 2004 BLMIS account statements received by the Defendant. On 5, 7, and 12 January 2004, Madoff purported to purchase three baskets of S&P 100 stocks, each of which included over 200,000 shares of Texas Instruments Inc. (TXN). However, according to Defendant's account statements, the shares of Texas Instruments were sold not between 17 and 20 February 2004, as were the other equities contained in the baskets, but rather on 22 January 2004. Despite this early sale of the Texas Instrument shares, the corresponding option hedges did not change. When Madoff purported to purchase the baskets in January 2004, he opened positions on 34,596 option contracts; when he purported to sell the baskets in February 2004, he closed positions on 34,596 option contracts. The hedge on these baskets never was rebalanced, which was a deviation from the split-strike strategy that should have put sophisticated financial entities,

such as the Defendant, on inquiry notice of, and prompted an inquiry as to, the purpose of these inconsistencies.

g. Madoff purportedly traded abnormally high volumes on the Defendant's Account

(26) The Defendant understood that Madoff did not make separate trades for each account. Madoff purported to purchase large baskets of stocks and options and allocated them to each account proportionately. When BLMIS was forced to register as an investment adviser in August 2006, it was required to report that it had $11.7 billion under management at the end of July 2006. Later filings stated that BLMIS was managing $13.2 billion at the end of 2006, and $17.1 billion at the end of 2007. Because the Defendant knew that Madoff allocated the baskets of stocks and options proportionately, the Defendant reasonably should have calculated or estimated the amounts of stocks and options that BLMIS would have had to purchase or sell for its customer accounts.

(27) The Defendant's account statements regularly indicated that BLMIS's trades in a particular stock for its accounts alone accounted for a large percentage of that stock's trading volume on the listed markets. This meant that BLMIS's trades on behalf of all of its IA Business customers often approached or exceeded the entire volume of trades on the listed markets.

(28) On at least three separate occasions, the Primeo Account's statements indicated that BLMIS traded more than 50% of the purportedly traded stock's volume on the entire NYSE. On 22 September 2006, BLMIS purportedly traded 102,258 shares of Wells Fargo & Company (WFC) on the Defendant's account. Extrapolating the Defendant's total purported BLMIS equity relative to BLMIS's reported assets under management, this would

mean that BLMIS accounted for 75.44% of all Wells Fargo shares traded that day on the NYSE.

h. Madoff had a suspiciously near-perfect ability to buy stocks at the lowest prices and sell at the highest prices

(29) Pricing reflected on trade confirmations and account statements received by the Defendant further demonstrated the implausibility of Madoff's trades, which almost always occurred at precisely the right time of the day. With remarkable consistency, when Madoff was purchasing shares, the reported average purchase price was in the lower half of the daily trade range, and when selling shares, the sale price was in the upper half of the daily trade range.

(30) Madoff also represented to investors that he was time-slicing—that is, entering the market at specific intervals over the course of a trading day. As such, the reported price purportedly was an average. In purchasing or selling an equity several times during the trading day, Madoff's reported prices should have gravitated toward the daily midpoint. Instead, they gravitated toward Madoff's optimal price point—a statistical impossibility that should have caused the Defendant to diligently scrutinise Madoff's trading.

(31) The Primeo Account statements and trade confirmations indicate that, over the life of the Primeo Account, 77.38% of 5,751 equity buys occurred in the lower half of the daily price range and 70.86% of 5,065 equity sales occurred in the upper half of the daily price range. For example, the Defendant's September 2004 BLMIS account statement indicated that 162 of 164 purported equity sales occurred in the upper half of the daily price range. Over the life of the Primeo Account, there were 21 months in which at least 90% of the equities either were sold in the upper half of the daily price range, or were purchased in the lower half of the daily price range.

(32) The First Primeo Account statements and trade confirmations indicate that, over the life of the First Primeo Account, 90.91% of 44 equity buys occurred in the lower half of the daily price range and 66.1% of 59 equity sales occurred in the upper half of the daily price range. For example, the Defendant's February 1998 BLMIS account statement indicated that 26 of 27 purported equity purchases occurred in the lower half of the daily price range.

i. Madoff executed equity trades that were outside the traded security's daily price range

(33) The First Primeo Account statement for February 1998 reported the sale of 954 shares of Bristol Meyers Squibb Company (BMY) with a settlement date of February 25, 1998. BLMIS records indicate that these stocks were sold on February 20, 1998, for $98.54 per share. However, the daily price range for Bristol Meyers Squibb stock on February 20, 1998, ranged from a high of $98.50 to a low of $96.63.

(34) The Primeo Account statement for January 2001 reported the purchase of 117,270 shares of Pfizer Inc. (PFE) with a settlement date of January 8, 2001. BLMIS records indicate that these stocks were purchased on January 3, 2001, for $40.56 per share. However, the daily price range for Pfizer Inc. stock purchased on January 3, 2001, ranged from a high of $46.44 to a low of $42.50. There are a total of 140 unique instances where the Defendant's account bought or sold securities outside of the daily price range.

j. BLMIS account statements and trade confirmations frequently contained settlement anomalies in options transactions

(35) The Defendant never noticed or ignored a high percentage of options transactions that settled in a time range outside of industry norms. In common practice, the settlement date for listed options is

on the business day following execution. However, trade confirmations and account statements produced by BLMIS regularly showed options transactions that settled three days after execution.

(36) The account statements and trade confirmations for the Primeo Account indicate that, out of 741 options transactions purportedly entered into on behalf of the Primeo Account, only 611 settled on the business day following execution, meaning that 17.54% of all of the purported options activity in Defendant's account did not comply with standard trading practices.

k. Madoff purportedly entered into trades where the settlement date occurred on a weekend

(37) The Defendant's BLMIS account statements and trade confirmations reflected trades for which the settlement date and/or the trade date occurred on a weekend. Because the markets are closed on weekends, settlement dates and trade dates cannot fall on a weekend.

(38) The account statements for the Primeo Account reported the execution of 200 S&P 100 Index put options and 200 S&P 100 Index call options with a trade date of 7 January 2000, a Friday, and a settlement date of 8 January 2000, a Saturday.

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

(39) 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; Sceptics 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 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, in *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 to a hedge fund 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". Thorp, in his assessment of Madoff, spells out the basic diligence that the Defendant could and should have undertaken. And he did so almost two decades before the collapse of BLMIS.

(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 was more pointed in its discomfort, stating "*it felt illegal ... Madoff was not transparent*", and 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 ("Aksia"), 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. 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 U.S. 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 ... Askia 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, Morgan Stanley, Bear Stearns and Credit Suisse.

(40) 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, oftentimes, improperly executed; and (3) the trades reported on those statements were fictitious.

VIII. US law constructive trust claims

57. Further or alternatively, as a matter of US law, BLMIS retained a beneficial interest in the Direct Transfers and the Indirect Transfers and the traceable proceeds thereof, and the Defendant received and holds the Direct Transfers and the Indirect Transfers and the traceable proceeds thereof 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.

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

(5) According to Madoff's plea allocution, the Ponzi scheme began at least as of the early 1990s although 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 BLMIS for the benefit of creditors of BLMIS once BLMIS became insolvent.

(7) BLMIS Management breached its fiduciary duty to BLMIS's creditors by making the Direct Transfers and the Indirect Transfers.

(8) The Defendant was unjustly enriched by the Direct Transfers and the Indirect Transfers, which were made in breach of BLMIS Management's fiduciary duty to BLMIS's 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 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.

58. 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'.

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

(1) BLMIS was incorporated in the US.

(2) BLMIS carried on business in the US.

(3) BLMIS is in liquidation in the US.

(4) Madoff and the other directors of BLMIS were, and still are, domiciled in the US.

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

(6) The 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. The 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 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) The Direct Transfers and the Indirect Transfers were made out of the 703 Account in New York.

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

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

IX. US Law Breach of Fiduciary Duty Claim

60. Further or alternatively, as a matter of US law, BLMIS is entitled to the restitution of the monies transferred to the Defendant because the Direct

Transfers and the Indirect Transfers were *void ab initio* as they took place in breach of the 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 is pleaded above, the BLMIS Management breached that duty by transferring monies to the Defendant when the monies should have been retained by BLMIS so that it could be appropriately distributed to its creditors.

(3) Because BLMIS Management breached its fiduciary duty by authorizing the Direct Transfers and the Indirect Transfers, the Direct Transfers and the Indirect 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 that they would have occupied but for the breach of fiduciary duty. In the present case, this requires that the Direct Transfers and/or the Indirect 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 is addressed above, the Defendant was unjustly enriched by the Direct Transfers and/or the Indirect Transfers, which were made in breach of the BLMIS Management's fiduciary duty to BLMIS's 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 Direct Transfers and/or the Indirect Transfers (or the traceable proceeds thereof) because it knew, or should have known, of BLMIS Management's breach of their fiduciary duty to BLMIS's creditors.

X. Cayman law preference claim

61. Each payment of monies by BLMIS to Herald and/or Alpha Prime was a conveyance or transfer of property.

62. Further or alternatively, each payment of monies by BLMIS to Herald and/or Alpha Prime occurred pursuant to a payment obligation.

63. The said conveyances, transfers, payments or payment obligations were made, incurred and/or suffered by BLMIS in favour of Herald and/or Alpha Prime.

64. Herald and/or Alpha Prime were, at the time of each of the said conveyances, transfers, payments or payment obligations, creditors of BLMIS.

65. The said conveyances, transfers, payments or payment obligations were 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.

66. The said conveyances, transfers, payments or payment obligations were made, incurred and/or suffered with a view to giving Herald and/or Alpha Prime a preference over the other creditors of BLMIS.

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

(2) Madoff had actual knowledge at the time of each conveyance, transfer or payment that BLMIS had insufficient assets to pay its creditors in full, and Madoff's knowledge of this fact is to be attributed to BLMIS.

(3) BLMIS intended to produce the natural and obvious consequences of its actions.

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

68. The following payments by BLMIS to Herald and Alpha Prime ("the Six Month Payments") occurred within six months immediately preceding the commencement of the SIPA liquidation:

(1) On 2 September 2008, BLMIS wired $3.5 million from the 703 Account to HSBC for the benefit of Alpha Prime.

(2) On or about 2 October 2008, BLMIS wired $113,000,000 from the 703 Account to HSBC for the benefit of Herald.

(3) On 27 October 2008, BLMIS wired $10 million from the 703 Account to HSBC for the benefit of Alpha Prime.

(4) On 3 November 2008, BLMIS wired $38.8 million from the 703 Account to HSBC for the benefit of Alpha Prime.

(5) On or about 4 November 2008, BLMIS wired $423,000,000 from the 703 Account to HSBC for the benefit of Herald.

69. 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.

70. At common law, this Court is entitled to apply section 145 of the Companies Law, or equivalent rules as a matter of common law, to declare that the Six Months Payments were invalid and/or to make appropriate orders to enable the Plaintiffs to recover the Six Month Payments and/or the traceable proceeds thereof. Alternatively, this Court is entitled to apply section 145 of the Companies Law (or equivalent rules) under sections 241 and 242 of the Companies Law, to declare that the Six Months Payments were invalid and/or to make appropriate orders to enable the Plaintiffs to recover the Six Month Payments and/or the traceable proceeds thereof.

71. As a result of the aforesaid invalidity of the Six Month Payments, to the extent that the Credit Balance consists of the Six Month Payments or the traceable proceeds thereof, and further or in the alternative to the claims advanced above, the Trustee contends that the estate of BLMIS is the beneficial owner of the Credit Balance and/or that the Defendant should be ordered to pay the Credit Balance to the Trustee.

72. Further or alternatively, by reason of the matters aforesaid, to the extent that the Defendant received the Six Month Payments and/or the traceable proceeds thereof and has dissipated the same, so 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.

XI. Claim in personam for knowing receipt

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

XII. Fraudulent Trading

74. The business of BLMIS was carried on with intent to defraud its creditors. Alternatively, the business of BLMIS was carried on with a fraudulent purpose.

75. By reason of the matters aforesaid, the Defendant was knowingly party to the carrying on of the business in the said manner.

76. If the liquidation of BLMIS were occurring in the Cayman Islands rather than the USA, the Court would be able to order the Defendant to make a contribution to the estate of BLMIS pursuant to section 147 of the Companies Law.

77. At common law, this Court is entitled to apply section 147 of the Companies Law, or equivalent rules as a matter of common law, so as to require the Defendant to make a contribution to the estate of BLMIS. Alternatively, this Court is entitled to apply section 147 of the Companies Law (or equivalent rules) under sections 241 and 242 of the Companies Law, so as to require the Defendant to make a contribution to the estate of BLMIS.

XIII. Interest

78. The Trustee is entitled to and claims:

(1) interest pursuant to section 34 of the Judicature Law on such damages or other monetary sums as may be awarded to the Trustee and/or the estate of BLMIS 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 and/or the estate of BLMIS herein, at such rate and for such period as the Court thinks fit.

AND THE PLAINTIFFS CLAIM

(1) An account and/or inquiry into the whereabouts of the Direct Transfers and the Indirect Transfers and the traceable proceeds of the same.

(2) An order under section 241(1)(e) of the Companies Law requiring the Defendant to pay the Credit Balance to the Trustee as the duly appointed representative of the estate of BLMIS.

(3) 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.

(4) An order under section 145, further or alternatively at common law, further or alternatively under sections 241 and 242 of the Companies Law, requiring the Defendant to pay the Six Month Payments (as defined above) or the traceable proceeds thereof 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

HIGGS & JOHNSON
Attorneys for the Plaintiffs

9 December 2010

This Writ was issued by Higgs & Johnson whose address for service is PO Box 866 George Town, Grand Cayman, KY1-1103, Cayman Islands

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

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.

(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 -

PRIMEO FUND (IN OFFICIAL 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

Attorney for

Please complete overleaf