BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201

Attorneys for Irving H. Picard, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Chapter 7 Estate of Bernard L. Madoff

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (LGB) SIPA Liquidation (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Chapter 7 Estate of Bernard L. Madoff, Plaintiff, v. BANCO BILBAO VIZCAYA ARGENTARIA, S.A. Defendant.	Adv. Pro. No. 10-05351 (CGM) **AMENDED COMPLAINT**

Irving H. Picard ("Trustee"), as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. § 78aaa–*lll* ("SIPA"), substantively consolidated with the chapter 7 estate of Bernard L. Madoff ("Madoff"), by and through his undersigned counsel, for his Amended Complaint against Defendant Banco Bilbao Vizcaya Argentaria, S.A. ("BBVA" or "Defendant"), alleges the following:

I. NATURE OF THE ACTION

1. This adversary proceeding is part of the Trustee's continuing efforts to recover BLMIS customer property, as defined by SIPA § 78*lll*(4), that was stolen as part of the massive Ponzi scheme perpetrated by Madoff and others.

2. The Trustee seeks to recover approximately $51,680,416 in subsequent transfers of BLMIS customer property made to Defendant by Fairfield Sentry Limited ("Fairfield Sentry"). Fairfield Sentry is a British Virgin Islands ("BVI") company that is in liquidation in the BVI.

3. Fairfield Sentry had direct customer accounts with BLMIS's investment advisory business ("IA Business") for the purpose of investing assets with BLMIS. Fairfield Sentry maintained at least 95% of its assets in its BLMIS customer accounts. BLMIS Feeder Funds, such as Fairfield Sentry, were special purpose entities that invested all or substantially all of their assets with BLMIS's IA Business.

4. BBVA and its subsidiaries invested in Fairfield Sentry from at least 2001 through 2008.

5. BBVA also invested in Fairfield Sentry to hedge its risk exposure arising from structured notes issued by BBVA and its affiliate, Boiro Finance B.V. ("Boiro").

6. BBVA's structured notes fell into two broad categories: (1) "Boiro Notes," which were notes issued by Boiro, a special purpose vehicle BBVA used to issue or execute different financial products hedged via swap transactions between Boiro and BBVA embedded in the notes;

and (2) "BBVA Notes," which were notes BBVA or one of its affiliates issued. The Boiro Notes and the BBVA Notes offered exposure to funds including Fairfield Sentry.

II. SUBJECT MATTER JURISDICTION AND VENUE

7. This is an adversary proceeding commenced in this Court in which the main underlying SIPA proceeding, No. 08-01789 (CGM) (the "SIPA Proceeding"), is pending. The SIPA Proceeding was originally brought in the United States District Court for the Southern District of New York as *Securities and Exchange Commission v. Bernard L. Madoff Investment Securities LLC et al.*, No. 08 CV 10791 (the "District Court Proceeding") and has been referred to this Court. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) and (e)(1), and SIPA § 78eee(b)(2)(A) and (b)(4).

8. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (F), (H), and (O). The Trustee consents to the entry of final orders or judgment by this Court if it is determined that consent of the parties is required for this Court to enter final orders or judgment consistent with Article III of the U.S. Constitution.

9. Venue in this judicial district is proper under 28 U.S.C. § 1409.

10. This adversary proceeding is brought under SIPA §§ 78fff(b) and 78fff-2(c)(3), 11 U.S.C. §§ 105(a) and 550, and other applicable law.

III. BACKGROUND, THE TRUSTEE, AND STANDING

11. On December 11, 2008 (the "Filing Date"), Madoff was arrested by federal agents for criminal violations of federal securities laws, including securities fraud, investment adviser fraud, and mail and wire fraud. Contemporaneously, the U.S. Securities and Exchange Commission (the "SEC") commenced the District Court Proceeding.

12. On December 15, 2008, under SIPA § 78eee(a)(4)(A), the SEC consented to combining its action with an application by the Securities Investor Protection Corporation

("SIPC"). Thereafter, under SIPA § 78eee(a)(4)(B), SIPC filed an application in the District Court alleging, among other things, that BLMIS could not meet its obligations to securities customers as they came due and its customers needed the protections afforded by SIPA.

13. Also on December 15, 2008, Judge Stanton granted SIPC's application and entered an order pursuant to SIPA, which, in pertinent part:

a. appointed the 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); and

c. removed the case to this Court pursuant to SIPA § 78eee(b)(4).

14. By orders dated December 23, 2008, and February 4, 2009, respectively, this Court approved the Trustee's bond and found that the Trustee was a disinterested person. Accordingly, the Trustee is duly qualified to serve and act on behalf of the estate.

15. On April 13, 2009, an involuntary bankruptcy petition was filed against Madoff, and on June 9, 2009, this Court substantively consolidated the chapter 7 estate of Madoff into the SIPA proceeding.

16. At a plea hearing on March 12, 2009, in the case captioned *United States v. Madoff*, No. 09-CR-213 (DC), Madoff pleaded guilty to an eleven-count criminal information filed against him by the United States Attorney for the Southern District of New York. At the plea hearing, Madoff admitted he "operated a Ponzi scheme through the investment advisory side of [BLMIS]."

17. At a plea hearing on August 11, 2009, in the case captioned *United States v. DiPascali*, No. 09-CR-764 (RJS), Frank DiPascali, a former BLMIS employee, pleaded guilty to a ten-count criminal information charging him with participating in and conspiring to perpetuate the Ponzi scheme. DiPascali admitted that no purchases or sales of securities took place in

connection with BLMIS customer accounts and that the Ponzi scheme had been ongoing at BLMIS since at least the 1980s.

18. At a plea hearing on November 21, 2011, in the case captioned *United States v. Kugel*, No. 10-CR-228 (LTS), David Kugel, a former BLMIS trader and manager, pleaded guilty to a six-count criminal information charging him with securities fraud, falsifying the records of BLMIS, conspiracy, and bank fraud. Kugel admitted to helping create false, backdated trades in BLMIS customer accounts beginning in the early 1970s.

19. On March 24, 2014, Daniel Bonventre, Annette Bongiorno, JoAnn Crupi, George Perez, and Jerome O'Hara were convicted of fraud and other crimes in connection with their participation in the Ponzi scheme as employees of BLMIS.

20. As the trustee appointed under SIPA, the Trustee is charged with assessing claims, recovering and distributing customer property to BLMIS's customers holding allowed customer claims, and liquidating any remaining BLMIS assets for the benefit of the estate and its creditors. The Trustee is using his authority under SIPA and the Bankruptcy Code to avoid and recover payouts of fictitious profits and/or other transfers made by BLMIS or Madoff to customers and others to the detriment of defrauded, innocent customers whose money was consumed by the Ponzi scheme. Absent this and other recovery actions, the Trustee will be unable to satisfy the claims described in subparagraphs (A) through (D) of SIPA § 78fff-2(c)(1).

21. Pursuant to SIPA § 78fff-1(a), the Trustee has the general powers of a bankruptcy trustee in a case under the Bankruptcy Code in addition to the powers granted by SIPA pursuant to SIPA § 78fff(b). Chapters 1, 3, 5, and subchapters I and II of chapter 7 of the Bankruptcy Code apply to this proceeding to the extent consistent with SIPA pursuant to SIPA § 78fff(b).

22. The Trustee has standing to bring the avoidance and recovery claims under SIPA § 78fff-1(a) and applicable provisions of the Bankruptcy Code, including 11 U.S.C. §§ 323(b), 544, and 704(a)(1), because the Trustee has the power and authority to avoid and recover transfers under Bankruptcy Code §§ 544, 547, 548, 550(a), and 551 and SIPA §§ 78fff-1(a) and 78fff-2(c)(3).

IV. BLMIS, THE PONZI SCHEME, AND MADOFF'S INVESTMENT STRATEGY

A. BLMIS

23. Madoff founded BLMIS in 1960 as a sole proprietorship and registered it as a broker-dealer with the SEC. In 2001, Madoff changed the corporate form of BLMIS from a sole proprietorship to a New York limited liability company. At all relevant times, Madoff controlled BLMIS, first as its sole member and thereafter as its chairman and chief executive.

24. In compliance with 15 U.S.C. § 78o(b)(1) and SEC Rule 15b1-3, and regardless of its business form, BLMIS operated as a broker-dealer from 1960 through 2008. Public records obtained from the Central Registration Depository of the Financial Industry Regulatory Authority Inc. reflect BLMIS's continuous registration as a securities broker-dealer during its operation. At all times, BLMIS was assigned CRD No. 2625. SIPC's Membership Management System database also reflects BLMIS's registration with the SEC as a securities broker-dealer beginning on January 19, 1960. On December 30, 1970, BLMIS became a member of SIPC when SIPC was created and continued its membership after 2001 without any change in status. SIPC membership is contingent on registration of the broker-dealer with the SEC.

25. For most of its existence, BLMIS's principal place of business was 885 Third Avenue in New York City, where Madoff operated three principal business units: a proprietary trading desk, a broker-dealer operation, and the IA Business.

26. BLMIS's website publicly boasted about the sophistication and success of its proprietary trading desk and broker-dealer operations, which were well known in the financial industry. BLMIS's website omitted the IA Business entirely. BLMIS did not register as an investment adviser with the SEC until 2006, following an investigation by the SEC that forced Madoff to register.

27. For more than 20 years preceding that registration, the financial reports BLMIS filed with the SEC fraudulently omitted the existence of billions of dollars of customer funds BLMIS managed through its IA Business.

28. In 2006, BLMIS filed its first Form ADV (Uniform Application for Investment Adviser Registration) with the SEC, reporting that BLMIS had 23 customer accounts with total assets under management ("AUM") of $11.7 billion. BLMIS filed its last Form ADV in January 2008, reporting that its IA Business still had only 23 customer accounts with total AUM of $17.1 billion. In reality, Madoff grossly understated these numbers. In December 2008, BLMIS had over 4,900 active customer accounts with a purported value of approximately $68 billion in AUM. At all times, BLMIS's Form ADVs were publicly available.

B. The Ponzi Scheme

29. At all relevant times, Madoff operated the IA Business as a Ponzi scheme using money deposited by customers that BLMIS claimed to invest in securities. The IA Business had no legitimate business operations and produced no profits or earnings. Madoff was assisted by several family members and a few employees, including Frank DiPascali, Irwin Lipkin, David Kugel, Annette Bongiorno, JoAnn Crupi, and others, who pleaded to, or were found guilty of, assisting Madoff in carrying out the fraud.

30. BLMIS's proprietary trading desk was also engaged in pervasive fraudulent activity. It was funded, in part, by money taken from the BLMIS customer deposits, but

fraudulently reported that funding as trading revenues and/or commissions on BLMIS's financial statements and other regulatory reports filed by BLMIS. The proprietary trading business was incurring significant net losses beginning in at least mid-2002 and thereafter, and thus required fraudulent infusions of cash from the IA Business to continue operating.

31. To provide cover for BLMIS's fraudulent IA Business, BLMIS employed Friehling & Horowitz CPA, P.C ("Friehling & Horowitz"), as its auditor, which accepted BLMIS's fraudulently reported trading revenues and/or commissions on its financial statements and other regulatory reports that BLMIS filed. Friehling & Horowitz was a three-person accounting firm based out of a strip mall in Rockland County, New York. Of the three employees at the firm, one was a licensed CPA, one was an administrative assistant, and one was a semi-retired accountant living in Florida.

32. On or about November 3, 2009, David Friehling, the sole proprietor of Friehling & Horowitz, pleaded guilty to filing false audit reports for BLMIS and filing false tax returns for Madoff and others. BLMIS's publicly available SEC Form X-17A-5 included copies of these fictitious annual audited financial statements prepared by Friehling & Horowitz.

Madoff's Investment Strategy

33. In general, BLMIS purported to execute two primary investment strategies for BLMIS customers: the convertible arbitrage strategy and the split-strike conversion strategy ("SSC Strategy"). For a limited group of BLMIS customers, primarily consisting of Madoff's close friends and their families, Madoff also purportedly purchased securities that were held for a certain time and then purportedly sold for a profit. At all relevant times, Madoff conducted no legitimate business operations using any of these strategies.

34. All funds received from BLMIS customers were commingled in a single BLMIS account maintained at JPMorgan Chase Bank. These commingled funds were not used to trade securities but rather to make distributions to, or payments for, other customers, to benefit Madoff and his family personally, and to prop up Madoff's proprietary trading business.

35. The convertible arbitrage investment strategy was supposed to generate profits by taking advantage of the pricing mismatches that can occur between the equity and bond/preferred equity markets. Investors were told they would gain profits from a change in the expectations for the stock or convertible security over time. In the 1970s this strategy represented a significant portion of the total BLMIS accounts, but by the early 1990s the strategy was purportedly used in only a small percentage of BLMIS accounts.

36. From the early 1990s forward, Madoff began telling BLMIS customers that he employed the SSC Strategy for their accounts, even though in reality BLMIS never traded any securities for its BLMIS customers.

37. BLMIS reported falsified trades using backdated trade data on monthly account statements sent to BLMIS customers that typically reflected impossibly consistent gains on the customers' principal investments.

38. By 1992, the SSC Strategy purported to involve: (i) the purchase of a group or basket of equities intended to highly correlate to the S&P 100 Index; (ii) the purchase of out-of-the-money S&P 100 Index put options; and (iii) the sale of out-of-the-money S&P 100 Index call options.

39. The put options were to limit the downside risk of sizeable price changes in the basket. The exercise of put options could not turn losses into gains, but rather could only put a floor on losses. By definition, the exercise of a put option should have entailed a loss for BLMIS.

40. The sale of call options would partially offset the costs associated with acquiring puts but would have the detrimental effect of putting a ceiling on gains. The call options would make it difficult, if not impossible, for BLMIS to perform as well as the market, let alone outperform the market, because in a rising market, calls would have been expected to be exercised by the counterparty.

41. The simultaneous purchase of puts and sale of calls to hedge a securities position is commonly referred to as a "collar." The collar provides downside protection while limiting the upside.

42. If Madoff was putting on the same baskets of equities across all BLMIS accounts, as he claimed, the total notional value of the puts purchased and of the calls sold had to equal the market value of the equities in the basket. For example, to properly implement a collar to hedge the $11.7 billion of AUM that Madoff publicly reported in 2006 would have required the purchase/sale of call and put options with a notional value (for each) of $11.7 billion. There are no records to substantiate Madoff's sale of call options or purchase of put options in any amount, much less in billions of notional dollars.

43. Moreover, at all times that BLMIS reported its total AUM, publicly available information about the volume of exchange-traded options showed that there was simply not enough call option notional value to support the SSC Strategy.

44. Madoff could not be using the SSC Strategy because his returns drastically outperformed the market. BLMIS showed only 16 months of negative returns over the course of its existence compared to 82 months of negative returns in the S&P 100 Index over the same time period. Not only did BLMIS post gains that exceeded (at times, significantly) the S&P 100 Index's performance, it would also regularly show gains when the S&P 100 Index was down (at times,

significantly). Such results were impossible if BLMIS had actually been implementing the SSC Strategy.

BLMIS's Fee Structure

45. BLMIS charged commissions on purportedly executed trades rather than industry-standard management and performance fees based on AUM or profits. By using a commission-based structure instead, Madoff inexplicably walked away from hundreds of millions of dollars in fees.

BLMIS's Market Timing

46. Madoff also lied to customers when he told them that he carefully timed securities purchases and sales to maximize value. Madoff explained that he succeeded at market timing by intermittently entering and exiting the market. During the times when Madoff purported to be out of the market, he purported to invest BLMIS customer funds in U.S. Treasury securities ("Treasury Bills") or mutual funds invested in Treasury Bills.

47. As a registered broker-dealer, BLMIS was required, pursuant to 17 C.F.R. § 240.17a-5, to file quarterly and annual reports with the SEC that showed, among other things, financial information on customer activity, cash on hand, and assets and liabilities at the time of reporting. BLMIS reportedly exited the market completely at every quarter end and every year end starting in 2003. These quarterly and year-end exits were undertaken to avoid these SEC requirements. But these exits also meant that BLMIS was stuck with the then-prevailing market conditions. It would be impossible to automatically sell all positions at fixed times, independent of market conditions, and win almost every time.

48. BLMIS's practice of exiting the market at fixed times, regardless of market conditions, was completely at odds with the opportunistic nature of the SSC Strategy, which does not depend on exiting the market in a particular month.

BLMIS's Execution

49. BLMIS's execution showed a consistent ability to buy low and sell high, an ability so uncanny that any sophisticated or professional investor would know it was statistically impossible.

No Evidence of BLMIS Trading

50. There is no record of BLMIS clearing a single purchase or sale of securities in connection with the SSC Strategy at The Depository Trust & Clearing Corporation, the clearing house for such transactions, its predecessors, or any other trading platform on which BLMIS could have traded securities. There are no other BLMIS records that demonstrate that BLMIS traded securities using the SSC Strategy.

51. All exchange-listed options relating to the companies within the S&P 100 Index, including options based upon the S&P 100 Index itself, clear through the Options Clearing Corporation ("OCC"). The OCC has no records showing that BLMIS cleared any trades in any exchange-listed options.

The Collapse of the Ponzi Scheme

52. The Ponzi scheme collapsed in December 2008, when BLMIS customers' requests for redemptions overwhelmed the flow of new investments.

53. At their plea hearings, Madoff and DiPascali admitted that BLMIS purchased none of the securities listed on the BLMIS customers' fraudulent statements, and that BLMIS through its IA Business operated as a Ponzi scheme.

54. At all relevant times, BLMIS was insolvent because (i) its assets were worth less than the value of its liabilities; (ii) it could not meet its obligations as they came due; and (iii) at the time of the transfers alleged herein, BLMIS was left with insufficient capital.

V. THE DEFENDANT

A. Defendant BBVA

55. BBVA is a global financial services group founded in 1857 with its current headquarters located at Ciudad BBVA - Calle Azul, 4 28050 Madrid, Spain. At all relevant times, BBVA had tens of billions of dollars in assets and multiple offices in the United States.

56. BBVA's Alternative Investments Division was tasked with general hedge fund research and analysis, selection and monitoring, and structured product management. In that role, it was responsible for choosing to have BBVA invest in Fairfield Sentry, marketing Fairfield Sentry to BBVA's investors, and understanding and monitoring Fairfield Sentry's strategy.

57. BBVA employees in both New York and Madrid worked in the Alternative Investments Division.

58. BBVA's New York branch is supervised by the Federal Reserve through the Federal Reserve Bank of New York, as well as licensed and supervised by the New York State Department of Financial Services. BBVA is also listed as a Registered Swap Dealer by the Commodity Futures Trading Commission, in accordance with the United States Dodd-Frank Wall Street Reform and Consumer Protection Act.

59. Beginning in 1988 and at all relevant times, BBVA also maintained a branch in Miami, Florida ("BBVA Miami") located at 2 South Biscayne Blvd, 1 Biscayne Tower, 31 Floor, Miami, FL 33131.

60. BBVA Miami was registered as a foreign corporation with the Florida Department of State Division of Corporations and listed employees of BBVA in Bilbao, Spain among its officers and directors.

61. BBVA sold BBVA Miami in 2008.

62. BBVA, along with its foreign branches and subsidiaries, including its New York branch and BBVA Miami, acted as a unified global financial services group with an intertwined network of franchises acting as "one team."

VI. PERSONAL JURISDICTION

63. Defendant is subject to personal jurisdiction in this judicial district because it purposely availed itself of the laws and protections of the United States and the state of New York.

64. BBVA is a global financial services group that maintains an office in New York, New York. At all relevant times, BBVA had tens of billions of dollars in assets and multiple offices in the United States.

65. BBVA and BBVA Miami knowingly directed funds to be invested with, and then redeemed from, New York-based BLMIS through Fairfield Sentry. By directing funds to, and redeeming funds from, New York-based BLMIS, Defendant knowingly accepted the rights, benefits, and privileges of conducting business and/or transactions in the United States and New York.

66. Fairfield Sentry provided BBVA and BBVA Miami with private placement memoranda in connection with their investments in Fairfield Sentry. Based on the information contained therein, Defendant knew the following facts indicating that it was transacting business in New York by investing in Fairfield Sentry:

- Fairfield Sentry invested at least 95% of its assets with New York-based BLMIS;
- BLMIS performed all investment management duties for these assets;

- BLMIS was in New York and was registered with the SEC;
- BLMIS was the executing broker for Fairfield Sentry's investments, and purportedly operated and executed SSC Strategy on the fund's behalf;
- BLMIS was the custodian of Fairfield Sentry's investments with BLMIS;
- BLMIS's SSC Strategy purportedly involved the purchase of U.S. equities and U.S. options;
- the decisions regarding which U.S. securities to purportedly purchase and when to make such purchases were made by BLMIS in New York; and
- BLMIS was "essential to the continued operation of" Fairfield Sentry.

67. BBVA and BBVA Miami executed subscription agreements in connection with their investments in Fairfield Sentry. These agreements stated that all money from Defendant would be directed to a New York HSBC Bank USA correspondent bank account for ultimate deposit in Fairfield Sentry's bank account. From Fairfield Sentry's bank account, the funds were deposited in BLMIS's account at JPMorgan Chase Bank N.A. in New York.

68. By executing subscription agreements with Fairfield Sentry, BBVA and BBVA Miami consented to jurisdiction in New York for claims with respect to the subscription agreements and Fairfield Sentry.

69. BBVA and BBVA Miami's subscription agreements with Fairfield Sentry also included a New York choice of law provision.

70. In addition, BBVA entered into a confidentiality agreement with Fairfield Greenwich (Bermuda) Ltd. ("FG Bermuda") regarding due diligence materials on Fairfield Sentry that FG Bermuda planned to share with BBVA for the purpose of evaluating investments in the fund. FG Bermuda is a Fairfield Greenwich Group ("FGG") administrative entity, which purportedly provided management services to FGG's funds. FGG is a *de facto* partnership that created, operated, and controlled the Fairfield Funds from New York. As in the subscription

agreements, BBVA agreed that any disputes arising out of the confidentiality agreement would be governed by New York law without reference to conflict of laws principles and "irrevocably and unconditionally" submitted to the jurisdiction of New York courts.

71. BBVA Miami also entered into a Letter of Understanding with FGG, which it agreed "shall be governed by and construed in accordance with the laws of the State of New York."

72. BBVA maintained, and still maintains, offices on Sixth Avenue in New York and in Madrid, Spain. BBVA employees from both its New York and Madrid offices conducted due diligence on Fairfield Sentry, Madoff, and BLMIS in connection with BBVA's investments in Fairfield Sentry. BBVA employees from Madrid traveled to New York to carry out their due diligence.

73. Alex von Zeigesar, a New York-based BBVA director and the Head of Hedge Fund Analysis (USA), which was part of the Alternative Investments team in BBVA's Global Markets Division ("Alternative Investments Division"), conducted due diligence from BBVA's New York office on FGG and its BLMIS feeder funds.

74. In early May 2006, BBVA sent four employees from Madrid to FGG's New York headquarters for a meeting with high-ranking FGG personnel, where they discussed, among other things, FGG's operations. The BBVA employees met with numerous FGG employees, including one of FGG's founding partners, Jeffrey Tucker.

75. During the meeting, BBVA's Madrid employees reported to FGG that BBVA had "very strong reservations as to the Madoff counter-party risk." FGG then arranged for a meeting between the BBVA employees and Madoff.

76. The BBVA employees requested additional information from FGG after the May 2006 meetings in New York. Among other things, BBVA requested Fairfield Sentry's BLMIS

account opening agreements, its BLMIS trading authorization agreement governing stock transactions, and the terms and conditions agreement governing options transactions.

77. In April 2007, BBVA's employees in Madrid planned another in-person meeting in New York with FGG "to do a visit to Madoff" and "catch up with all the Fairfield Sentry projects."

78. In November 2007, von Ziegesar worked with BBVA's Madrid-based Head of Hedge Fund Selection and Monitoring in the Alternative Investments Division, Jose Martin Gutierrez de Cabiedes, to arrange a weeklong series of meetings in New York. One of the purposes of the meetings was to visit FGG in New York and "[s]trengthen the relationship and common knowledge between the Madrid and NY teams."

79. In December 2007, BBVA's employees in Madrid traveled to New York and visited FGG's New York headquarters. After the meeting, BBVA's employees in Madrid and New York continued to communicate with FGG employees regarding follow-up questions related to FGG's operations.

80. Von Ziegesar was in regular contact with FGG's New York-based partner Andrew Smith and on at least one occasion requested greater transparency into BBVA's investments with Fairfield Sentry.

81. In September 2008, von Ziegesar called FGG's Chief Risk Officer, Amit Vijayvergiya, to request BLMIS's audited financials. Vijayvergiya sent von Ziegesar BLMIS's 2007 audited financials, which confirmed that BLMIS was in New York and revealed that BLMIS's auditor was Friehling & Horowitz.

82. Von Ziegesar also accompanied two other Madrid-based BBVA employees on visits to BLMIS's office, where they met with Madoff and BLMIS employees on behalf of BBVA,

as requested in April 2007. Madoff's personal calendar and the visitor list for BLMIS's office building in New York reflect that von Ziegesar and his Madrid-based coworkers made visits to BLMIS in October and November 2008.

83. Defendant derived significant revenue from New York, purposefully availed itself of the benefits of the United States, and otherwise submitted itself to this Court's jurisdiction for the purposes of this proceeding and in connection with the claims alleged herein.

84. Defendant should reasonably expect to be subject to New York jurisdiction and is subject to personal jurisdiction pursuant to New York Civil Practice Law & Rules §§ 301 and 302 (McKinney 2001) and Federal Rule of Bankruptcy Procedure 7004.

VII. RECOVERY OF SUBSEQUENT TRANSFERS TO BBVA

A. Initial Transfers from BLMIS to Fairfield Sentry

85. The Trustee commenced a separate adversary proceeding against Fairfield Sentry and other defendants in this Court, under the caption *Picard v. Fairfield Sentry, Ltd., et al.*, Adv. Pro. No. 09-01239 (CGM), seeking to avoid and recover initial transfers of customer property from BLMIS to Fairfield Sentry in the approximate amount of $3,000,000,000 (the "Fairfield Sentry Initial Transfers").

86. By orders dated June 7 and June 10, 2011, this Court approved a settlement among the Trustee, Fairfield Sentry, and others; and on July 13, 2011, entered a consent judgment in favor of the Trustee and against Fairfield Sentry in the amount of $3,054,000,000 (the "Judgment Amount") [ECF No. 109].

87. The Fairfield Sentry Initial Transfers are set forth in the attached **Exhibits A and B**. The Fairfield Sentry Initial Transfers were and continue to be customer property within the meaning of SIPA § 78*lll*(4).

88. On August 28, 2020, the Trustee filed a second amended complaint in *Picard v. Fairfield Investment Fund, Ltd. (In re Madoff)*, Adv. Pro. No. 09-01239 (CGM) ("Second Amended Complaint") [ECF No. 286] seeking, in part, the recovery of the Fairfield Sentry Initial Transfers in satisfaction of the Judgment Amount and the entry of a declaratory judgment that the Fairfield Sentry Initial Transfers comprising the Judgment Amount are avoided.

89. As alleged in the Second Amended Complaint, Fairfield Sentry received each of the Fairfield Sentry Initial Transfers with actual knowledge of fraud at BLMIS, or, at a minimum, while aware of suspicious facts that would have led Fairfield Sentry to inquire further into the BLMIS fraud. The Trustee incorporates by reference the allegations contained in the Second Amended Complaint as if fully set forth herein, including but not limited to paragraphs 1–10, 79–313, 315–16.

90. Of the Judgment Amount, $2,895,000,000 was transferred to Fairfield Sentry during the six years preceding the Filing Date (the "Fairfield Sentry Six Year Transfers"). Each of the Fairfield Sentry Six Year Transfers is avoidable under § 544 of the Bankruptcy Code and applicable provisions of the N.Y. Debt. & Cred. Law, particularly §§ 273–279, and of SIPA, particularly § 78fff-2(c)(3).

91. Of the Fairfield Sentry Six Year Transfers, $1,580,000,000 was transferred to Fairfield Sentry during the two years preceding the Filing Date (the "Fairfield Sentry Two Year Transfers"). Each of the Fairfield Sentry Two Year Transfers is avoidable under § 548 of the Bankruptcy Code and applicable provisions of SIPA, particularly § 78fff-2(c)(3).

B. Subsequent Transfers from Fairfield Sentry to BBVA

92. Prior to the Filing Date, Fairfield Sentry subsequently transferred a portion of the Fairfield Sentry Initial Transfers to BBVA (the "Subsequent Transfers").

93. Based on the Trustee's investigation to date, in the two years preceding the Filing Date, BBVA—directly and through BBVA Miami—received approximately $51,680,416 in transfers from Fairfield Sentry. Charts setting forth the presently known Fairfield Sentry transfers to BBVA, directly and through BBVA Miami, are attached as **Exhibits C–D**.

94. The Subsequent Transfers are recoverable from BBVA under § 550(a) of the Bankruptcy Code and applicable provisions of SIPA, particularly § 78fff-2(c)(3).

95. The Subsequent Transfers represent a redemption of equity interests by BBVA as shareholder in Fairfield Sentry. Because Fairfield Sentry invested all or substantially all of its assets into the BLMIS Ponzi scheme, Fairfield Sentry was insolvent when it made the Subsequent Transfers to BBVA upon redemption of its interests.

COUNT ONE

RECOVERY OF SUBSEQUENT TRANSFERS
11 U.S.C. §§ 105(a) AND 550(a)

96. The Trustee incorporates by reference the allegations contained in the previous paragraphs of this Amended Complaint as if fully rewritten herein.

97. The Subsequent Transfers are recoverable from Defendant under 11 U.S.C. § 550(a) and 15 U.S.C. § 78fff-2(c)(3).

98. Defendant is an immediate or mediate transferee of the Subsequent Transfers.

99. As a result of the foregoing, pursuant to 11 U.S.C. §§ 105(a) and 550(a), and 15 U.S.C. § 78fff-2(c)(3), the Trustee is entitled to a judgment against Defendant: (a) recovering the Subsequent Transfers, or the value thereof, from Defendant for the benefit of the estate of BLMIS; and (b) awarding any other relief as the Court deems appropriate.

WHEREFORE, the Trustee respectfully requests that this Court enter judgment on Count One in favor of the Trustee and against Defendant as follows:

a) Recovering the Subsequent Transfers, or the value thereof, from Defendant for the benefit of the estate;

b) If Defendant challenges the avoidability of the Fairfield Sentry Initial Transfers, the Trustee seeks a judgment under Fed. R. Bankr. P. 7001(1) and (9) declaring that such transfers are avoidable pursuant to 15 U.S.C. § 78fff-2(c)(3), §§ 105(a), 544(b), 547(b), 548(a), and 551 of the Bankruptcy Code, and §§ 273–279 of the N.Y. Debt. & Cred. Law, as applicable, and as necessary to recover the Subsequent Transfers pursuant to § 550 of the Bankruptcy Code and 15 U.S.C. § 78fff-2(c)(3);

c) Awarding the Trustee prejudgment interest from the date on which the Subsequent Transfers were received by Defendant; and

d) Awarding the Trustee fees and all applicable costs and disbursements, and such other, further, and different relief as the Court deems just, proper, and equitable.

Dated: July 31, 2024
New York, New York

/s/ Brian W. Song

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Email: dsheehan@bakerlaw.com
Brian W. Song
Email: bsong@bakerlaw.com
Ganesh Krishna
Email: gkrishna@bakerlaw.com

Attorneys for Irving H. Picard, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Chapter 7 Estate of Bernard L. Madoff