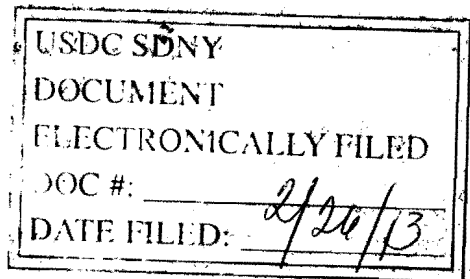


Baker Hostetler



Baker & Hostetler LLP

45 Rockefeller Plaza
New York, NY 10111T 212.589.4200
F 212.589.4201
www.bakerlaw.comDavid J. Sheehan
direct dial: 212.589.4618
dsheehan@bakerlaw.com

February 26, 2013

VIA FACSIMILE (212) 805-6382

Honorable Victor Marrero
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
Suite 660
500 Pearl Street
New York, New York 10007-1312

Re: Trustee's Request for Limited Intervention in *Anwar v. Fairfield Greenwich Limited*, Case No. 09-cv-118 (S.D.N.Y.)

Dear Judge Marrero:

I write as counsel to Irving Picard, the court-appointed Trustee in the liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS"), to advise the court that the Trustee intends to file a motion for limited intervention in *Anwar v. Fairfield Greenwich Limited*, No. 09-cv-118, and to request, in accordance with your Honor's standing order, a pre-motion conference. Copies of this letter will be simultaneously delivered to all counsel.

It is the Trustee's duty under the Securities Investor Protection Act, 15 U.S.C. §78aaa *et seq.* ("SIPA"), to recover property wrongly transferred from the BLMIS estate and to distribute that property ratably to BLMIS customers, according to SIPA's statutory priority scheme. In furtherance of that duty, the Trustee has filed actions against a number of the *Anwar* defendants to recover property transferred to them from the BLMIS estate. The Trustee's claims involve much of the same conduct and many of the same occurrences as those that are the subject of the *Anwar* action. Through November of last year, the Trustee was led to

Honorable Victor Marrero

February 25, 2013

believe that the *Anwar* defendants would only go forward with a “global settlement” resolving both his claims against the *Anwar* defendants and those of the *Anwar* plaintiffs in a mutually agreeable fashion. On November 6, 2012, however, counsel to the Trustee first learned that the parties to *Anwar* had reached and filed a proposed settlement that would dissipate much of the same customer property that the Trustee seeks in his pending actions against the defendants. Accordingly, counsel to the Trustee notified the *Anwar* parties of the Trustee’s objection to the settlement, and the Trustee filed a collateral action, as part of the ongoing SIPA liquidation proceedings, to enjoin the settlement.

On February 6, 2013, this Court granted the Injunction Defendants’ motion to withdraw the reference from the Bankruptcy Court of the Trustee’s Injunction Application. On February 19, 2013, the Trustee filed his reply brief in support of the Application. In the interests of judicial and party economy, the Trustee now timely seeks to intervene directly in *Anwar* and to assert at the March 22, 2013, fairness hearing his position that he has superior claims to the assets that are the subject of the settlement. The Trustee is entitled to intervene as of right because the proposed settlement, if approved, would drain money from the same limited pool of assets on which the Trustee has first claim under SIPA. The *Anwar* parties have effectively conceded, in their briefing opposing the Trustee’s injunction action, that the settlement would leave insufficient funds to satisfy the Trustee’s claims. In this respect, the Trustee has a direct “interest relating to the property or transaction that is the subject of the action,” and it is plain that consummation of the settlement would therefore “as a practical matter impair or impede the movant’s ability to protect its interest.” Fed. R. Civ. P. 24(a)(2).

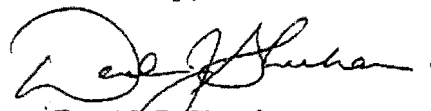
It is also plain, from the face of the proposed settlement, that no existing party represents the Trustee’s interest in this litigation. The Trustee’s position, supported by the Securities Investor Protection Corporation, is that the *Anwar* plaintiffs’ state law claims are preempted, and their Exchange Act claims displaced, by SIPA, to the extent that they impinge upon the Trustee’s rights and obligations under SIPA. This does not mean that those claims *must* ultimately fail, but only that they may not be resolved in a way that conflicts with SIPA. The *Anwar* plaintiffs concede that they will benefit from distributions made to the Funds by the Trustee in the SIPA liquidation, see *Anwar Plaintiffs’ Supplemental Memorandum* at 4 (the Funds’ investors will recover only a tiny fraction of their losses through any distributions that the Funds might get from the Trustee), and that at least some portion of the monies sought originated from BLMIS converted customer funds. *Id.* at 4. Their conjecture as to the size of any distribution to the Funds notwithstanding, the Trustee submits that any approval of the proposed settlement must be deferred until the Trustee’s superior claims are resolved, at which point there will no longer be any conflict. To do otherwise would create an irreconcilable conflict with SIPA by allowing feeder fund investors to benefit from stolen customer property at the expense of the owners of such property.

Honorable Victor Marrero
February 25, 2013

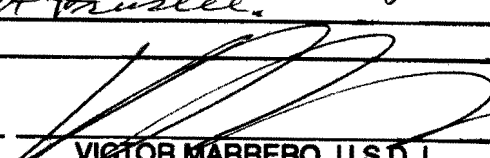
The Trustee also seeks to intervene, in the alternative, on permissive intervention grounds under Rule 24(b). His action shares with the main action common questions of law and fact, and his intervention will not unduly delay or prejudice the adjudication of the rights of the existing parties, who have been aware of the Trustee's objection to their settlement and whose settlement is, in any case, challenged on similar grounds in the Trustee's injunction action.

Accordingly, the Trustee respectfully requests a conference on his motion to intervene, or that the Court waive this requirement so that the Trustee may file his motion, and lodge his objections to the proposed settlement, as early as possible in advance of the fairness hearing.

Sincerely,


David J. Sheehan

Cc: Kevin H. Bell, Esq.
All Counsel of Record (By Email)

<i>The parties are directed to respond by 2-28-13, by letters not to exceed three (3) pages, respectively, to the matter set forth above by the SIPA Trustee.</i>	
SO ORDERED:	
2-26-13	
DATE	VICTOR MARRERO, U.S.D.J.