

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

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.

LEGACY CAPITAL LTD.,

Defendant.

Adv. Pro. No. 10-05286 (LGB)

**MOTION FOR THE ISSUANCE OF A LETTER OF REQUEST**

1. Irving H. Picard, as trustee (the “Trustee”) for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Chapter 7 Estate of Bernard L. Madoff, through the Trustee’s attorneys, Baker & Hostetler LLP, respectfully submits this Motion for the Issuance of a Letter of Request for International Judicial Assistance to High Court of the British Virgin Islands to collect documents from Hamilton Trust & Management

Company Limited (“Hamilton Trust”) and H.T.M. Services Ltd. (“HTM Services” and together with Hamilton Trust, the “HTM Entities”), British Virgin Island entities.

2. This application is made pursuant to 28 U.S.C. § 1781, this Court’s inherent authority, and in light of the comity between the United States and British Virgin Islands. Service will be effected pursuant to the *Hague Convention of 18 March 1970 of the Taking of Evidence Abroad in Civil or Commercial Matters*, to which the United States and British Virgin Islands are signatories.

3. Hamilton Trust and HTM Services are third parties to this action and are not subject to discovery under the Federal Rules of Civil Procedure. Thus, the Letter of Request provides the only means of compelling discovery from Hamilton Trust and HTM Services.

### **FACTUAL BACKGROUND**

#### **Madoff’s Ponzi Scheme and Legacy Capital’s Connection to BLMIS**

4. Madoff, through the investment advisory business of BLMIS, conducted a decades-long Ponzi scheme of breathtaking scale. (*See* Exhibit 1 to Trustee’s Request for International Judicial Assistance, Trustee’s Amended Complaint filed on July 2, 2015 (ECF No. 112) (“Am. Compl.”).)

5. Legacy Capital Ltd. (“Legacy”) is a British Virgin Islands corporation with principal place of business in care of Hamilton Trust & Management Company Limited, Level 1, Palm Grove House, Wickham’s Cay 1, Road Town, Tortola VG 1110, British Virgin Islands.

6. Legacy is single purpose entity that invested solely with BLMIS through Account No. 1FR071 (the “Legacy Capital Account”). (*Id.* ¶¶ 32-33.)

7. The Legacy Capital Account was opened by transfers from two other BLMIS accounts owned by Mayer-related entities—HCH Management Company Ltd. (BLMIS Account

No. 1FR055) and Montpellier International LDC. (*Id.* ¶ 34.) HCH Management Company Ltd. and Montpellier International LDC (BLMIS Account No. 1FN027) were the original shareholders of Legacy.

8. In the two years preceding BLMIS’s collapse, Legacy received \$174 million in fraudulent transfers from BLMIS, comprising both fictitious profits and principal. (*Id.* ¶ 144). The Trustee has obtained a judgment for fictitious profits (ECF No. 230) and is now seeking avoidance of the remaining transfers. (Am. Compl. ¶¶ 156–61.)

9. Jimmy Mayer was a director and had signatory authority over and controlled the Legacy Capital Account, and Rafael Mayer was an officer of Legacy. (*Id.* ¶ 33.) HCH Management Company Ltd. later sold its Legacy shares to Prince Assets Ltd., f/k/a Prince Assets LDC (“Prince Assets”).

10. Rafael Mayer was also a member of the investment committee for one of Legacy’s ultimate investors, Meritage Fund Ltd. (“Meritage”), a fund controlled by Renaissance Technologies, LLC (“Renaissance”). (*Id.* ¶ 41).

11. Renaissance became suspicious of BLMIS’s trading activity and presented its findings to the investment committee for one of Legacy’s ultimate investors, Meritage (the “Meritage Oversight Committee”). (*Id.* ¶¶ 46-48.) Specifically, Renaissance found that: “(i) the market could not support the options volume Madoff purported to trade; (ii) a very high percentage of BLMIS’s purported equity trades were bought below the daily closing price and sold above the daily closing price; (iii) Renaissance’s simulation of Madoff’s strategy put him in the market on days the account statements showed he was out; and (iv) Madoff’s ability to trade billions of dollars without leaving a footprint was an unsolved mystery.” (*Id.* ¶ 47.)

12. The Trustee alleges that Rafael Mayer also expressed concerns requiring Madoff's explanation, and with the help of another member of the Meritage Oversight Committee, drafted a script to confront Madoff about trading impossibilities and red flags. (*Id.* ¶¶ 59-60.) Despite the suspicions and/or concerns, the Meritage Oversight Committee redeemed only half of Meritage's investment. (*Id.* ¶ 138.) Soon thereafter, Rafael Mayer secured a commitment of funds from BNP Paribas (*Id.* ¶ 139-40.)

13. In order to secure this commitment of funds, the Legacy investors, including HCH, pledged their shares of Legacy as collateral with BNP Paribas. (*Id.* ¶¶ 139-140.)

14. Legacy retained Khronos LLC ("Khronos"), another entity controlled by the Mayers, to conduct an ongoing quantitative analysis of the Legacy Capital Account statements and trade confirmations, (*id.* ¶¶ 2, 35, 52), and track BLMIS's "pricing and volume statistics.". (*Id.* ¶¶ 2, 80.)

15. The Trustee alleges that Legacy's account statements and trade confirmations demonstrated Madoff was engaging in impossible option transactions. (*Id.* ¶¶ 66-69.) The Trustee alleges that Legacy continued to ignore all the warning signs of fraud and continued investing in BLMIS.

#### **The HTM Entities Have Relevant Documents**

16. HTM Services was incorporated on November 20, 2000 in the British Virgin Islands.

17. HTM Services was director and secretary for Legacy through 2008 and was authorized to perform actions on behalf of Legacy, including approving investments made by and on behalf of Legacy.

18. HTM Services' registered agent is Hamilton Trust.

19. Hamilton Trust served and is still serving as the registered agent and service provider for Legacy and was authorized to perform tasks on behalf of Legacy, including filing corporate documents.

20. The HTM Entities have documents and communications concerning their responsibilities, including authoring investments made by and on behalf of Legacy, and the Trustee is entitled to these documents.

21. This Letter of Request is part of the Trustee's efforts to obtain documentary evidence regarding Legacy's suspicions and/or concerns that BLMIS's investment advisory business was not legitimate. The Trustee alleges that Legacy was on notice of trading irregularities and impossibilities at BLMIS and also of suspicions expressed by Renaissance concerning the lack of correlation between BLMIS's returns and the market's returns. The Trustee also alleges that Legacy knew that BLMIS operated with little to no transparency and that there was no independent custodian to assure the proper segregation of assets. (*Id.* ¶ 102.) The Trustee believes that the evidence sought reflects relevant information provided by the HCH Entities to Legacy, including notice of suspicious circumstances suggesting fraud or illegitimate activities, corporate resolutions, or written consent to invest in BLMIS and redeem Legacy's investment from BLMIS, and the transfer of shares of Legacy from HCH Capital to Prince Assets, and communications regarding the same.

22. The Trustee received substantial document productions on or after September 29, 2023, which the Trustee used to formulate the requests herein.

23. The documents sought are relevant to the Trustee's allegations in the ongoing proceedings and intended for use at trial to support the Trustee's claims to avoid and recover fraudulent transfers to Legacy. This evidence is essential for the Trustee to fulfill his statutory

mandate to maximize recovery of customer property for the ultimate benefit of all of Madoff's defrauded victims.

24. The Trustee seeks documents in the following categories:
  - a. Communications and other documentation concerning the tasks and actions HTM Services carried out as director of Legacy. This includes decisions to invest in BLMIS, decisions to redeem from BLMIS, resolutions and authorizations to appoint individuals or entities as director, secretary, or service providers of Legacy.
  - b. Communications and other documentation concerning the subscriptions into and redemptions from Legacy. These documents are directly relevant to the Trustee's fraudulent transfer claims.
  - c. Communications and other documentation related to Legacy's investment activities and any analysis of such investments, as well as Legacy's corporate affairs, including its compliance with statutory requirements.
  - d. Communications and other documentation concerning the HTM Entities' maintenance of records of Legacy's shares, shareholders, and ownership.
  - e. Communications and other documentation concerning the analysis performed by the HTM Entities alongside Legacy and Khronos regarding the investments with BLMIS. This would include communications and documents concerning analysis performed on behalf of Legacy regarding BLMIS and related investments. Such documents go directly to the Trustee's allegations that Legacy had suspicions and/or concerns that BLMIS's investment advisory business was not legitimate.

25. For the above reasons, the Trustee believes that the proposed Letter of Request (**Exhibit A**) is just and appropriate and respectfully requests that the Court issue such Letter of Request to the indicated Judicial Authority.

Dated: April 2, 2024  
New York, New York

/s/ Carrie Longstaff  
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