

## Corporate & Financial Weekly Digest

August 19, 2011 by [Steven Shiffman](#)

### Second Circuit Affirms Madoff Trustee's Net Equity Calculation

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The United States Court of Appeals for the Second Circuit found in favor of the trustee (the Trustee) presiding over the liquidation of Bernard L. Madoff Investment Securities (BMIS), affirming the Trustee's calculation of "net equity" in the BMIS liquidation. The Trustee calculates net equity to determine the value of claims submitted by victims of Madoff's massive fraud.

The dispute focused on two methods for calculating net equity. The Trustee argued that net equity should be based on the 'Net Investment Method,' which credited the amount of cash deposited by the customer into his or her BMIS account, less amounts withdrawn. The customers objecting to the Trustee's proposed method advocated the so-called 'Last Statement Method,' which would calculate net equity based on the market value of securities reflected on their last BMIS customer statements. After reviewing the relevant statutory provisions, the Second Circuit ruled in favor of the Trustee and the Net Investment Method, holding that the last statements, produced by Madoff and his fraudulent enterprise were totally unreliable, and that "if the Trustee had permitted the objecting claimants to recover based on their final account statements, this would have 'affected the limited amount available for distribution from the customer property fund' . . . . The inequitable consequence of such a scheme would be that those who had already withdrawn cash deriving from imaginary profits in excess of their initial investment would derive additional benefit at the expense of those customers who had not withdrawn funds before the fraud was exposed." In so ruling, the court was careful to say that the Net Equity Method was not the only way for a Securities Investor Protection Act trustee to calculate net equity, and that the facts and circumstances of particular cases could oftentimes require a different method to be used.

*In re Bernard L. Madoff Investment Securities LLC*, 10-2378 (2d Cir. August 16, 2011).

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