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Hearing Date: September 17, 2013 at 10:00 a.m.
Objection Deadline: September 10, 2013

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

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

In re:
BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

MAXAM ABSOLUTE RETURN FUND, L.P.;
MAXAM ABSOLUTE RETURN FUND, LTD.;
MAXAM CAPITAL MANAGEMENT LLC;
MAXAM CAPITAL GP LLC; SANDRA L.
MANZKE REVOCABLE TRUST; SANDRA L.
MANZKE, as trustee and individually; SUZANNE
HAMMOND; WALKER MANZKE; and APRIL
BUKOFSER MANZKE;

Defendants.

Adv. Pro. No. 08-01789 (BRL)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 10-05342 (BRL)

**MOTION FOR ENTRY OF ORDER PURSUANT TO SECTION 105(a)
OF THE BANKRUPTCY CODE AND RULES 2002 AND 9019 OF THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE APPROVING
A SETTLEMENT AGREEMENT BY AND BETWEEN
THE TRUSTEE AND MAXAM ABSOLUTE RETURN FUND, L.P.; MAXAM
ABSOLUTE RETURN FUND, LTD.; MAXAM CAPITAL MANAGEMENT LLC;
MAXAM CAPITAL GP LLC; SANDRA L. MANZKE REVOCABLE TRUST;
SANDRA L. MANZKE; SUZANNE HAMMOND; WALKER MANZKE;
AND APRIL BUKOFSER MANZKE**

TO: THE HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE:

Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the estate of Bernard L. Madoff (“Madoff,” and together with BLMIS, collectively, the “Debtors”), by and through his undersigned counsel, submits this motion (the “Motion”) seeking entry of an order (the “Approval Order”), pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving a settlement, the terms and conditions of which are set forth in the settlement agreement (the “Agreement”)¹ by and among the Trustee on the one hand, and MAXAM Absolute Return Fund, L.P. (“MARF LP”), MAXAM Absolute Return Fund, Ltd. (“MARF Ltd.”), MAXAM Capital Management LLC (“MAXAM Capital”), MAXAM Capital GP LLC (“MAXAM GP”), Sandra L. Manzke Revocable Trust (“Manzke Trust”), Sandra L. Manzke (“Manzke”), Suzanne Hammond (“Hammond”), Walker Manzke (“Walker”), and April Bukofser Manzke (“April”) (collectively the “MAXAM Defendants”), on the other hand. In support of the Motion, the Trustee respectfully represents:

¹ The form of Agreement is attached hereto as Exhibit “A.”

PRELIMINARY STATEMENT

1. The Trustee's settlement with the MAXAM Defendants results in a \$97.8 million settlement payment to the Trustee and represents a recovery of 100% of the MAXAM Defendants' withdrawals from BLMIS at issue in this Adversary Proceeding.

2. This settlement represents a good faith, complete, and total settlement between the Trustee and the MAXAM Defendants as to any and all disputes between them raised in this Adversary Proceeding and the direct customer claim submitted by MARF LP for BLMIS Account 1M0232, including, but not limited to, claims the Trustee had against the MAXAM Defendants for the avoidance and recovery of transfers to them by BLMIS. The settlement will benefit the customers of BLMIS holding allowed claims, as well as the indirect investors who invested with the MAXAM Defendants, and the Trustee respectfully requests that the Court approve it.

BACKGROUND

3. On December 11, 2008 (the "Filing Date"),² the Securities and Exchange Commission ("SEC") filed a complaint in the United States District Court for the Southern District of New York (the "District Court") against the Debtors (Case No. 08 CV 10791). The complaint alleged that the Debtors engaged in fraud through investment advisor activities of BLMIS.

4. On December 15, 2008, pursuant to section 78eee(a)(4)(A) of SIPA, the SEC consented to a combination of its own action with an application of the Securities Investor

² In this case, the Filing Date is the date on which the Securities and Exchange Commission commenced its suit against BLMIS, December 11, 2008, which resulted in the appointment of a receiver for the firm. See Section 78lll(7)(B) of SIPA.

Protection Corporation (“SIPC”). Thereafter, pursuant to section 78eee(a)(3) of SIPA, 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 came due and, accordingly, its customers needed the protection afforded by SIPA.

5. On that date, the District Court entered the Protective Decree, to which BLMIS consented, which, in pertinent part:

- (i) removed the receiver and appointed the Trustee for the liquidation of the business of BLMIS pursuant to section 78eee(b)(3) of SIPA;
- (ii) appointed Baker & Hostetler LLP as counsel to the Trustee pursuant to section 78eee(b)(3) of SIPA; and
- (iii) removed the case to this Court pursuant to section 78eee(b)(4) of SIPA.

6. At a plea hearing on March 12, 2009 (the “Plea Hearing”) in the criminal action filed against him by the United States Attorney’s Office for the Southern District of New York, Madoff pled guilty to an 11-count criminal information, which counts included securities fraud, money laundering, theft and embezzlement. At the Plea Hearing, Madoff admitted that he “operated a Ponzi scheme through the investment advisory side of [BLMIS].” (Plea Hr’g Tr. at 23:14-17.) On June 29, 2009, Madoff was sentenced to a term of imprisonment of 150 years.

7. On April 13, 2009, an involuntary bankruptcy petition was filed against Madoff. On June 9, 2009, this Court entered an order substantively consolidating the Chapter 7 estate of Madoff into the BLMIS SIPA proceeding.

THE CLAIMS AGAINST THE MAXAM DEFENDANTS

8. On December 8, 2010, the Trustee filed a complaint commencing this Adversary Proceeding against the MAXAM Defendants, seeking the avoidance and recovery of transfers totaling \$97.8 million made to MARF LP from BLMIS, as well as the recovery of subsequent transfers allegedly made from MARF LP to the remaining MAXAM Defendants.

9. Defendant MARF LP is a Delaware limited partnership, with its principal place of business in Darien, Connecticut, whose sole purpose was to invest in a BLMIS account opened in July 2006. Defendant MAXAM GP is MARF LP's general partner. Defendant MARF Ltd. is a Cayman Islands limited liability company and a limited partner in MARF LP. Defendant MAXAM Capital, a Delaware limited liability company with its principal place of business located in Darien, Connecticut, was the investment manager for MARF LP and MARF Ltd. Defendant Manzke founded MAXAM Capital in 2005 and served as its Chairman and CEO. Defendant Manzke Trust was created by and for the benefit of Manzke and is a limited partner in MARF LP.

10. The Trustee alleged that MARF LP received direct transfers from BLMIS totaling \$97.8 million, all of which occurred within the two years prior to the Filing Date, including \$25 million during the 90-day period prior to the Filing Date. In addition, the Trustee has alleged that the remaining MAXAM Defendants received subsequent transfers from MARF LP.

11. The Trustee's claims against the MAXAM Defendants include, among other relief sought, to (a) avoid and recover initial transfers made by BLMIS within the applicable statutory period (the "Transfers") under Sections 547, 548, 550 and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3); (b) recover subsequent transfers made under Sections 548, 550(a) and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3); (c) disallow the MARF LP customer claim against the BLMIS estate pursuant to Section 502(d) of the Bankruptcy Code; and (d) equitably subordinate MARF LP's customer claim against the BLMIS estate pursuant to Section 510(c) of the Bankruptcy Code (collectively, the "Trustee's Claims").

12. The MAXAM Defendants dispute any liability to the BLMIS estate under all counts alleged in the complaint.

13. The Trustee also named Manzke as an individual defendant in another adversary proceeding, *Picard v. Tremont Group Holdings, et al.*, Adv. Pro. No. 10-05310 (the “Tremont Adversary Proceeding”), based on her role as a principal at Tremont Group Holdings and/or its affiliates prior to the formation of MAXAM Capital in 2005. In the Tremont Adversary Proceeding, the Trustee has settled with and dismissed all defendants other than Manzke. Manzke has disputed any liability to the BLMIS estate under all counts alleged in the Tremont Adversary Proceeding.

MARF LP’s CUSTOMER CLAIM

14. Prior to July 2, 2009, the bar date for filing customer claims, MARF LP filed a customer claim with the Trustee; assigned claim number 004554 (the “Customer Claim”); and asserting losses based on account number 1M0232 in the aggregate amount of Two Hundred Fifteen Million Two Hundred Eighty-Seven Million Dollars (\$215,287,000.00). The Customer Claim amount reflects the difference between amounts deposited into BLMIS and the amounts withdrawn by MARF LP in account number 1M0232, which is consistent with the Trustee’s “net equity” calculation of customer claims previously affirmed by this Court. A copy of the Customer Claim is attached as Exhibit “B.”³

SETTLEMENT DISCUSSIONS AND TRUSTEE’S INVESTIGATION

15. During the past several years, the MAXAM Defendants and the Trustee, through their respective counsel, have engaged in multiple good faith discussions aimed at resolving the Trustee’s claims and the amount, if any, of MARF LP’s customer claim. Those discussions intensified over the past six months, resulting in an amicable resolution.

³ Due to the voluminous nature of the schedules and attachments to the customer claim number 004554, those documents are not being filed herewith and are not included within Exhibit “B.”

16. Prior to and during settlement negotiations—which included a period of active discovery in the Adversary Proceeding—the Trustee conducted a comprehensive investigation of the MAXAM Defendants’ investments with BLMIS, and the MAXAM Defendants’ role in the overall BLMIS scheme. The Trustee has received extensive document productions and written discovery, conducted depositions, and served non-party subpoenas in the Adversary Proceeding. The Trustee also conducted a thorough investigation prior to the filing of the Adversary Proceeding, which included the substantial review of account statements, transactional histories, correspondence, and other records available to the Trustee, as well as conducting Bankruptcy Rule 2004 examinations. As a result, the Trustee has reviewed extensive information from both the MAXAM Defendants and non-party sources concerning MARF LP’s investments with BLMIS and the other MAXAM Defendants’ involvement with MARF LP and BLMIS.

17. After a review of the relevant information and a thorough and deliberate consideration of the uncertainty and risks inherent in all litigation, the Trustee, in the exercise of his business judgment, has determined that it is appropriate to amicably resolve this matter, rather than continue with litigation.

OVERVIEW OF THE AGREEMENT

18. The principal terms and conditions of the Agreement are generally as follows:⁴
- The MAXAM Defendants shall cause to pay to the Trustee for the benefit of the Fund of Customer Property \$98,700,000.00 from the SIPC Advance and catch-up distributions from the First and Second Interim Distributions

⁴ Terms not otherwise defined in this section shall have the meaning ascribed in the Agreement. In the event of any inconsistency between the summary of terms provided in this section and the terms of the Agreement, the Agreement shall prevail.

owed to MARF LP based on its allowed claim as part of the settlement. This amount represents all transfers received by MARF LP from BLMIS.

- MARF LP shall have an allowed customer claim in the SIPA Proceeding in the amount of Two Hundred Seventy-Six Million Six Hundred Eighty-Seven Thousand Dollars (\$276,687,000.00), which shall be entitled to a SIPC customer advance under SIPA § 78fff-3(a). The allowed claim is comprised of MARF LP's Net Equity Claim of \$215,287,000.00, plus an increase of \$61,400,000.00 under Section 502(h) of the Bankruptcy Code.
- Manzke Trust will waive 50% of its right to any distribution by MARF LP based on funds received as a result of MARF LP's allowed claim.
- The Trustee will release, acquit, and absolutely discharge the MAXAM Defendants on the specific terms set forth in the Agreement.
- The MAXAM Defendants will release, acquit, and absolutely discharge the Trustee and all his agents and BLMIS and its consolidated estate on the specific terms set forth in the Agreement.
- The Trustee shall submit to the Bankruptcy Court a stipulation or motion requesting the dismissal of this Adversary Proceeding, with prejudice, as against the MAXAM Defendants.
- The Trustee shall submit to the Bankruptcy Court a stipulation or motion requesting the dismissal of the Tremont Adversary Proceeding, as against Manzke.

RELIEF REQUESTED

19. By this Motion, the Trustee respectfully requests that the Court enter an order substantially in the form of the proposed Order attached hereto as Exhibit “C” approving the Agreement.

LEGAL BASIS

20. Bankruptcy Rule 9019(a) states, in pertinent part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Courts have held that in order to approve a settlement or compromise under Bankruptcy Rule 9019(a), a bankruptcy court should find that the compromise proposed is fair and equitable, reasonable, and in the best interests of a debtor’s estate. *In re Ionosphere Clubs, Inc.*, 156 BR 414, 426 (S.D.N.Y. 1993), *aff’d*, 17 F.3d 600 (2d Cir. 1994) (citing *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)).

21. The Second Circuit has stated that a bankruptcy court, in determining whether to approve a compromise, should not decide the numerous questions of law and fact raised by the compromise, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” *Liu v. Silverman (In re Liu)*, 1998 U.S. App. LEXIS 31698, at *3 (2d Cir. Dec. 18, 1998) (quoting *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983)); *see also Masonic Hall & Asylum Fund v. Official Comm. Of Unsecured Creditors (In re Refco, Inc.)*, 2006 U.S. Dist. LEXIS 85691, at *21-22 (S.D.N.Y. Nov. 16, 2006); *In re Ionosphere Clubs*, 156 B.R. at 426; *In re Purified Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993) (“[T]he court need not conduct a ‘mini-trial’ to determine the merits of the underlying litigation”); *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991).

22. In deciding whether a compromise falls within the “range of reasonableness,” courts consider the following factors:

- (i) the probability of success in the litigation;
- (ii) the difficulties associated with collection;
- (iii) the complexity of the litigation, and the attendant expense, inconvenience, and delay; and
- (iv) the paramount interests of the creditors (or in this case, customers).

In re Refco, Inc., 2006 U.S. Dist. LEXIS 85691 at *22; *Nellis v. Shugrue*, 165 B.R. 115, 122 (S.D.N.Y. 1994) (citing *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 292 (2d Cir. 1992), *cert. dismissed*, 506 U.S. 1088 (1993)).

23. The bankruptcy court may credit and consider the opinions of the trustee or debtor and their counsel in determining whether a settlement is fair and equitable. See *In re Purified Down Prods.*, 150 B.R. at 522; *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. at 505. The competency and experience of counsel supporting the settlement may also be considered. *Nellis*, 165 B.R. at 122. Finally, the court should be mindful of the principle that “the law favors compromise.” *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. at 505 (quoting *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976)).

24. The Trustee believes that the terms of the Agreement fall well above the lowest point in the range of reasonableness. The Agreement resolves all claims among the Parties and avoids the cost and delay of what could otherwise be lengthy and contentious litigation. (Affidavit of the Trustee in Support of the Motion (the “Picard Affidavit”)). A true and accurate copy of the Picard Affidavit is attached hereto as Exhibit “D”).

25. The Agreement greatly furthers the interests of BLMIS customers by adding \$97.8 million to the Fund of Customer Property, and results in the Trustee recovering 100% of

the withdrawals made by MARF LP from BLMIS—all made within two years prior to the Filing Date—without the delay, expense and uncertainty of recovery through further litigation. In addition, under the Agreement, Manzke Trust will give up one-half of its interest in distributions made by MARF LP to its limited partners.

CONCLUSION

26. In sum, the Trustee submits that the Agreement should be approved: (a) to avoid any further litigation that may be lengthy, burdensome, and expensive; and, (b) because it represents a fair and reasonable compromise of the Trustee’s Claims that greatly benefits the estate and the customers of BLMIS. Because the Agreement is well within the “range of reasonableness” and confers a substantial benefit on the estate, the Trustee respectfully requests that the Court enter an Order approving the Agreement.

NOTICE

27. In accordance with Bankruptcy Rules 2002 and 9019, notice of this Motion has been given to (i) SIPC; (ii) the SEC; (iii) the Internal Revenue Service; (iv) the United States Attorney for the Southern District of New York; (v) James N. Lawlor, Esq., Wollmuth Maher & Deutsch LLP, One Gateway Center, Newark, New Jersey 07102; and (vi) Jonathan D. Cogan, Esq., Kobre & Kim LLP, 800 Third Avenue, New York, New York 10022. Notice of this Motion also will be provided via email and/or U.S. Mail to all persons who have filed notices of appearance in the BLMIS proceeding and to all defendants in this Adversary Proceeding pursuant to the Order Establishing Notice Procedures (ECF No. 4560). The Trustee submits that no other or further notice is required.

WHEREFORE, the Trustee respectfully requests entry of an Order substantially in the form of Exhibit "C" granting the relief requested in the Motion.

Dated: New York, New York
August 26, 2013

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Respectfully submitted,

/s/ David J. Sheehan

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Hearing Date: September 17, 2013 at 10:00 a.m.
Objection Deadline: September 10, 2013

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

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

In re:
BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

MAXAM ABSOLUTE RETURN FUND, L.P.;
MAXAM ABSOLUTE RETURN FUND, LTD.;
MAXAM CAPITAL MANAGEMENT LLC;
MAXAM CAPITAL GP LLC; SANDRA L.
MANZKE REVOCABLE TRUST; SANDRA L.
MANZKE, as trustee and individually; SUZANNE
HAMMOND; WALKER MANZKE; and APRIL
BUKOFSEER MANZKE;

Defendants.

Adv. Pro. No. 08-01789 (BRL)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 10-05342 (BRL)

**NOTICE OF MOTION FOR ENTRY OF ORDER PURSUANT TO
SECTION 105(a) OF THE BANKRUPTCY CODE AND RULES 2002
AND 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE
APPROVING A SETTLEMENT AGREEMENT BY AND BETWEEN
THE TRUSTEE AND MAXAM ABSOLUTE RETURN FUND, L.P.; MAXAM
ABSOLUTE RETURN FUND, LTD.; MAXAM CAPITAL MANAGEMENT LLC;
MAXAM CAPITAL GP LLC; SANDRA L. MANZKE REVOCABLE TRUST;
SANDRA L. MANZKE; SUZANNE HAMMOND; WALKER MANZKE;
AND APRIL BUKOFSEER MANZKE**

Irving H. Picard (the "Trustee"), as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") and the estate of Bernard L. Madoff ("Madoff"), by and through his undersigned counsel, will move before the Honorable Burton R. Lifland, United States Bankruptcy Judge, at the United States Bankruptcy Court, Alexander Hamilton Customs House, One Bowling Green, New York, New York 10004, on September 17, 2013 at 10:00 a.m., or as soon thereafter as counsel may be heard, seeking entry of an order, pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, approving a certain settlement agreement by and among the Trustee on the one hand, and MAXAM Absolute Return Fund, L.P., MAXAM Absolute Return Fund, Ltd., MAXAM Capital Management LLC, MAXAM Capital GP LLC, Sandra L. Manzke Revocable Trust, Sandra L. Manzke, Suzanne Hammond, Walker Manzke and April Bukofser Manzke (collectively the "MAXAM Defendants"), on the other hand, as more particularly set forth in the Motion annexed hereto (the "Motion").

PLEASE TAKE FURTHER NOTICE that written objections to the Motion must be filed with the Clerk of the United States Bankruptcy Court, One Bowling Green, New York, New York 10004 by no later than **5:00 p.m. on September 10, 2013** (with a courtesy copy delivered to the Chambers of the Honorable Burton R. Lifland) and must be served upon (a) Baker &

Hostetler LLP, counsel for the Trustee, 45 Rockefeller Plaza, New York, New York 10111, attn: Eric R. Fish; (b) Kobre & Kim LLP, counsel for MAXAM Capital Management LLC, MAXAM Capital GP LLC, MAXAM Absolute Return Fund, Ltd., Sandra L. Manzke Revocable Trust, Sandra L. Manzke, Suzanne Hammond, Walker Manzke and April Bukofser Manzke, 800 Third Avenue, New York, New York 10022, attn.: Jonathan D. Cogan; and (c) Wollmuth Maher & Deutsch LLP, counsel for the MAXAM Absolute Return Fund, L.P., One Gateway Center, Newark, New Jersey 07102, attn.: James N. Lawlor. Any objections must specify the interest that the objecting party has in these proceedings and the specific basis of any objection to the Motion.

Dated: New York, New York
August 26, 2013

BAKER & HOSTETLER LLP

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the Substantively Consolidated SIPA
Liquidation of Bernard L. Madoff
Investment Securities LLC and the Estate of
Bernard L. Madoff*

EXHIBIT "A"

**SETTLEMENT AGREEMENT BETWEEN
TRUSTEE AND MAXAM DEFENDANTS**

AGREEMENT

This Agreement, dated as of August 14, 2013 (“Agreement”), is made by and between Irving H. Picard, in his dual capacity as the Trustee (the “Trustee”) for the liquidation proceedings under the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. §§ 78aaa, et seq. (“SIPA”), of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the substantively consolidated Chapter 7 case pending before the United States Bankruptcy Court for the Southern District Court of New York (the “Bankruptcy Court”) of Bernard L. Madoff (“Madoff”), on the one hand, and MAXAM Absolute Return Fund, L.P. (“MARF LP”), MAXAM Absolute Return Fund, Ltd. (“MARF Ltd.”), MAXAM Capital Management LLC (“MAXAM Capital”), MAXAM Capital GP LLC (MAXAM GP”), Sandra L. Manzke (“Manzke”), Sandra L. Manzke Revocable Trust (“Manzke Trust”), Suzanne Hammond (“Hammond”), Walker Manzke (“Walker”), and April Bukofser Manzke (“April”), on the other hand. MARF LP, MARF Ltd., MAXAM Capital, MAXAM GP, Manzke, Manzke Trust, Hammond, Walker, and April collectively shall be referred to herein as the “MAXAM Defendants.” The Trustee and the MAXAM Defendants collectively shall be referred to herein as the “Parties.”

BACKGROUND

A. BLMIS and its predecessors were registered broker-dealers and members of the Securities Investor Protection Corporation (“SIPC”).

B. On December 11, 2008 (the “Filing Date”), the Securities and Exchange Commission (the “SEC”) filed a complaint in the United States District Court for the Southern District of New York (the “District Court”) against BLMIS and Madoff. On December 12, 2008, the District Court entered an order which among other things appointed a receiver for the assets of BLMIS (No. 08-CV-10791(LLS)).

C. On December 15, 2008, pursuant to section 5(a)(4)(A) of SIPA, the SEC consented to a combination of its own action with the application of SIPC. Thereafter, SIPC filed an application in the District Court under section 5(a)(3) of SIPA alleging, inter alia, that BLMIS was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protections afforded by SIPA. On December 15, 2008, the District Court granted the SIPC application and entered an order under SIPA, which, in pertinent part, appointed the Trustee for the liquidation of the business of BLMIS under section 5(b)(3) of SIPA, removed the receiver, and removed the case to the Bankruptcy Court under section 5(b)(4) of SIPA, where it is currently pending as Case No. 08-01789 (BRL) (the “SIPA Proceeding”). The Trustee is duly qualified to serve and act on behalf of the estate of BLMIS (the “BLMIS Estate”). By Order dated June 9, 2009, the estate of Madoff was substantively consolidated with the estate of BLMIS.

D. MARF LP maintained an account with BLMIS that was designated account No. 1M0232, which was opened in or about July 5, 2006 (the “MAXAM BLMIS Account”). Between 2006 and the Filing Date, on an overall basis MARF LP deposited into the MAXAM BLMIS Account a total of Two Hundred and Fifteen Million, Two Hundred and Eighty Seven

Thousand Dollars (\$215,287,000.00) in excess of the amount of withdrawals that MARF LP made from the MAXAM BLMIS Account. MARF LP deposited a total of Three Hundred Thirteen Million, Eighty Seven Thousand Dollars into the MAXAM BLMIS Account (\$313,087,000.00) during the same time period. MARF LP withdrew Twenty Five Million Dollars (\$25,000,000.00) from the MAXAM BLMIS Account within 90 days before the Filing Date, and withdrew an additional Seventy Two Million Eight Hundred Thousand Dollars (\$72,800,000.00) during the period more than ninety days but less than two years before the Filing Date (the "MAXAM Withdrawals"). MARF LP made no withdrawals from the MAXAM BLMIS Account in the period of more than two years before the Filing Date.

E. On or about March 2, 2009, MARF LP filed a customer claim with the Trustee, which the Trustee has designated as Claim No. 004554 (the "MAXAM Customer Claim"). The MAXAM Customer Claim is included as Attachment A to this Agreement. The MAXAM Customer claim asserts that MARF LP is entitled to the securities reflected on the MAXAM BLMIS Account statement for the period ended November 30, 2008.

F. The Trustee has brought an adversary proceeding against the MAXAM Defendants in the Bankruptcy Court under the caption *Picard v. MAXAM Absolute Return Fund, L.P., et al.*, Adv. Pro. No. 10-05342 (the "Adversary Proceeding"). In the Adversary Proceeding, the Trustee asserts that MARF LP as the initial transferee, and MAXAM Capital, MAXAM GP, MARF Ltd., Manzke, the Manzke Trust, Hammond, April and Walker, as subsequent transferees, are liable to the BLMIS Estate under 11 U.S.C. §§ 544, 547, 548, 550, 551, SIPA § 78fff-(2)(c)(3), and the New York Fraudulent Conveyance Act (New York Debtor and Creditor Law §§ 270-281) for MAXAM Withdrawals made by MARF LP from BLMIS. Pursuant to Bankruptcy Code § 502(d), the Trustee also seeks in the Complaint to disallow or, in the alternative, subordinate the MAXAM Customer Claim. The Trustee also asserts that some of the MAXAM Defendants, including MAXAM Capital, MAXAM GP, MARF Ltd., Manzke, Hammond, Walker, and April are liable to the BLMIS Estate as subsequent transferees with respect to fees allegedly paid in connection with the MAXAM BLMIS Account.

G. The Trustee also named Manzke as a defendant in another adversary proceeding, *Picard v. Tremont Group Holdings, Inc. et al.*, Adv. Pro. No. 10-05310 (the "Tremont Adversary Proceeding"). In the Tremont Adversary Proceeding the Trustee has settled with, and dismissed all defendants except Manzke.

H. The Manzke Trust is a limited partner in MARF LP.

I. All claims of the Trustee against the MAXAM Defendants under 11 U.S.C. §§ 544, 547, 548, 550, or 551, SIPA § 78fff-(2)(c)(3), and the New York Debtor and Creditor Law §§ 270-281 shall be referred to herein as the "Avoiding Power Claims."

J. While the MAXAM Defendants believe they have complete defenses to the claims asserted by the Trustee, they recognize that there is litigation cost and risk associated with the Adversary Proceeding and the Avoiding Power Claims alleged therein and have decided to settle with the Trustee prior to engaging in any further expensive and time-consuming litigation in the action brought against them by the Trustee.

K. The Trustee, on the one hand, and the MAXAM Defendants, on the other hand, desire to settle their disputes about the matters described above without the expense, delay and uncertainty of litigation.

AGREEMENT

1. Payment to Trustee. At the Closing (as defined in paragraph 10) MARF LP shall pay or cause to be paid to the Trustee, pursuant to the conveyances, assignments, endorsements and transfers set forth in paragraph 10, the sum of Ninety-Seven Million Eight Hundred Thousand Dollars (\$97,800,000.00) (the "Settlement Payment") in full and final settlement and satisfaction of all Avoiding Power Claims and other claims of the Trustee of every kind and nature whatsoever, whether known or unknown (as described in paragraph 7), that the Trustee or the BLMIS Estate may have against the MAXAM Defendants.

2. Allowance of MAXAM Claim. Upon the occurrence of the Closing (as defined in paragraph 10), notwithstanding section 502(d) of the Bankruptcy Code, the customer claim of MARF LP shall be deemed conclusively allowed pursuant to section 502(h) of the Bankruptcy Code and 15 U.S.C. section 78fff(11), equal in priority to other allowed customer claims against the BLMIS Estate in the amount of Two Hundred Seventy-Six Million Six Hundred Eighty-Seven Thousand Dollars (\$276,687,000.00) (the "Allowed Claim").

The Bankruptcy Court's order approving this Agreement shall provide for the conclusive allowance, without any set off deductions or counterclaims, of the Allowed Claim as provided in this paragraph and in paragraph 10. In addition, the Trustee, in all capacities, shall treat MARF LP like any similarly situated BLMIS account holder with an allowed claim in connection with the distribution of any other funds under his discretion and control.

Notwithstanding the releases by the MAXAM Defendants in paragraph 6 below, should a final and nonappealable court order determine that Trustee is incorrect in his interpretation of "net equity" and its corresponding application to the determination of customer claims, the Trustee will be bound by that order and will apply it retroactively. In the event of such an order, nothing in this Agreement, shall be construed as a waiver of any rights or claims held by MARF LP as a customer, as defined in section 78fff(2)(e)(4) of SIPA, of BLMIS ("BLMIS Customer") in having the Allowed Claim re-determined in accordance with such court order. In the event of such a re-determination, any additional payments due to the MAXAM Defendants shall be made on a pro rata basis following any applicable SIPC advance based upon the final re-determined claim amount and in accordance with any court orders concerning distributions. Nothing in this paragraph shall be interpreted to modify the releases by the Trustee in paragraph 5 below or to retroactively diminish the amount of the Allowed Claim.

Notwithstanding the releases by the MAXAM Defendants in paragraph 6 below, nothing set forth in this agreement is intended to bar or otherwise impair MARF LP's right, and MARF LP expressly retains its right, to assert a claim or claims in any asset forfeiture distribution program established to address remission claims arising from the Madoff fraud, including but not limited to the Madoff Victim Fund established by the United States Department of Justice.

(iii) conveying, assigning, endorsing, and transferring to the Trustee Eighty-Four Million Five Hundred Sixty-Six Thousand Eight Hundred Sixty-Four Dollars and Twenty-Six Cents (\$84,566,864.26) from the catch-up distribution owed to MARF LP under the Allowed Claim from the distribution made by the Trustee pursuant to the Court's order dated July 26, 2012 (the "Second Interim Distribution").

These actions shall constitute full payment of the Settlement Payment owed by the MAXAM Defendants to the Trustee. No further action on the part of MARF LP other than the execution of this Agreement is required.

(b) The Trustee shall pay MARF LP Twenty-One Million Three Hundred Forty-Thousand Six Hundred Eighteen Dollars and Seventy-Three Cents (\$21,340,618.73), consisting of the balance of the catch-up distribution owed to MARF LP under the Second Interim Distribution (consisting of Eight Million Two Hundred Seventy-Eight Thousand Two Hundred Twenty-Five Dollars and Forty-Six Cents (\$8,278,225.46)) and the catch-up distribution owed to MARF LP under the Allowed Claim from the distribution made by the Trustee pursuant to the Court's order dated March 13, 2013 (the "Third Interim Distribution") (consisting of Thirteen Million Sixty-Two Thousand Three Hundred Ninety-Three Dollars and Twenty-Seven Cents (\$13,062,393.27)); and

(c) The releases contained in paragraphs 5 and 6 shall become effective without any further action by any of the Parties.

11. MAXAM Defendants' and Trustee's Authority. All MAXAM Defendants represent and warrant to the Trustee that, as of the date hereof, each of them has the full power, authority and legal right to execute and deliver, and to perform their respective obligations under this Agreement and have taken all necessary action to authorize the execution, delivery, and performance of their respective obligations under this Agreement. The Trustee represents and warrants to all MAXAM Defendants that, as of the date hereof, and subject to the approval of the Bankruptcy Court as set forth in paragraph 9 above, he has the full power, authority and legal right to execute and deliver, and to perform his obligations under this Agreement and has taken all necessary action to authorize the execution, delivery, and performance of his respective obligations under this Agreement.

12. Further Assurances. The Parties shall execute and deliver any document or instrument reasonably requested by any of them after the date of this Agreement to effectuate the intent of this Agreement.

13. Entire Agreement. This Agreement supersedes all prior agreements, representations, and understandings concerning the subject matter hereof.

14. No Admission. This Agreement and all negotiations, statements, and proceedings in connection therewith are not, will not be argued to be, and will not be deemed to be a presumption, concession or admission by any Party of any fault, liability or wrongdoing whatsoever. This Agreement and any matter relating thereto may not be offered or received in evidence or otherwise referred to in any civil, criminal, or administrative action or proceeding as

without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence or such different or additional facts. All MAXAM Defendants and the Trustee acknowledge and shall be deemed to have acknowledged that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

8. Dismissal of Adversary Proceedings. Within five (5) days of the Closing (as defined in paragraph 10), the Trustee shall submit to the Bankruptcy Court a stipulation or motion requesting the dismissal of the Adversary Proceeding, with prejudice, as against all MAXAM Defendants, with each party bearing its own costs, attorneys' fees, and expenses. Within five (5) business days of the Closing (as defined in paragraph 10), the Trustee shall submit to the Bankruptcy Court a stipulation dismissing with prejudice Manzke from the Tremont Adversary Proceeding, with each party bearing their own costs, attorneys' fees, and expenses.

9. Bankruptcy Court Approval; Effective Date; Termination. This Agreement is subject to, and shall become effective and binding on the Parties upon, and only upon, the Bankruptcy Court's approval of this Agreement in the SIPA Proceeding by an order that is no longer subject to appeal, review or rehearing (the date when this Agreement becomes effective and binding on the Parties, the "Effective Date"). The form of the approval order in the SIPA Proceeding shall be subject to the MAXAM Defendants' reasonable approval. The Trustee shall use his reasonable efforts to obtain approval of the Agreement in the SIPA Proceeding as promptly as practicable after the date of this Agreement. If this Agreement has not become effective as provided in this paragraph within 360 days after the date of this Agreement (or within such additional time as mutually agreed upon by the Parties), then (a) this Agreement (other than this paragraph) shall terminate and be void; (b) all of the statements, concessions, consents and agreements contained in the Agreement (other than this paragraph) shall be void; and (c) neither the Trustee nor any of the MAXAM Defendants may use or rely on any such statement, concession, consent or agreement in any public statement or litigation involving the SIPA Proceeding or any case or proceeding relating to any of the MAXAM Defendants, BLMIS or Madoff.

10. Closing. There shall be a closing ("Closing") within five (5) business days after the Effective Date of this Agreement. At the Closing simultaneously:

(a) MARF LP shall satisfy the Settlement Payment required under paragraph 1 by:

(i) conveying, assigning, endorsing, and transferring to the Trustee the funds to be advanced by SIPC in the amount of Five Hundred Thousand Dollars (\$500,000.00);

(ii) conveying, assigning, endorsing, and transferring to the Trustee the catch-up distribution of Twelve Million Seven Hundred Thirty-Three Thousand One Hundred Thirty-Five Dollars and Seventy-Four Cents (\$12,733,135.74) owed to MARF LP under the Allowed Claim from the distribution made by the Trustee pursuant to the Court's order dated July 12, 2011 (the "First Interim Distribution"); and

considerations arising under this Agreement including the right to collect any past catch-up distributions and future distributions on the Allowed Claim, upon the Closing (as defined in paragraph 10), all MAXAM Defendants hereby release, acquit and forever discharge the Trustee and all his agents, representatives, attorneys, employees, professionals, BLMIS and its consolidated estate, from any and all past, present or future claims or causes of action (including any suit, petition, demand, or other claim in law, equity or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts), of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorneys' fees, costs or disbursements), known or unknown, existing as of the date of the Closing, based on, arising out of or in any way related to BLMIS, the MAXAM BLMIS Account or the MAXAM Withdrawals, except for the Allowed Claim, and/or any and all claims and rights of the MAXAM Defendants to enforce the obligations of the Trustee under this Agreement. For the avoidance of doubt, the MAXAM Defendants are not waiving any rights to the Allowed Claim or to collect the Allowed Claim.

The release contained herein shall become effective on the Effective Date (as defined in paragraph 9) and upon completion of the Closing (as defined in paragraph 10) without any further action by any of the Parties.

7. Unknown Claims. Unknown Claims shall mean any released claims pursuant to paragraphs 5 and 6 of the Agreement, as defined herein, that the MAXAM Defendants or the Trustee do not know or suspect to exist in their favor at the time of giving the release, in this Agreement that if known by them, might have affected their settlement and release, in this Agreement. With respect to any and all released claims in paragraphs 5 and 6 of this Agreement, the MAXAM Defendants and the Trustee shall expressly waive or be deemed to have waived, the provisions, rights and benefits of California Civil Code section 1542 (to the extent it applies herein), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

All MAXAM Defendants and the Trustee expressly waive, and shall be deemed to have waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, that is similar, comparable or equivalent in effect to California Civil Code section 1542. All MAXAM Defendants and the Trustee shall expressly have and shall be deemed to have fully, finally and forever settled and released any and all claims, known or unknown, suspected or unsuspected, contingent or noncontingent, whether or not concealed or hidden, that now exist or heretofore have existed, upon any theory of law or equity, under the bankruptcy code or SIPA, now existing or coming into existence in the future, including conduct that is negligent, reckless, intentional, with or

3. Agreement by Manzke Trust to Waive Fifty Percent of Its Interest in MARF LP Distributions. As part of this Agreement, Manzke Trust agrees to waive fifty percent (50%) of its right to any distribution by MARF LP based upon funds received as a result of the Allowed Claim. The amount of the waived distribution shall be distributed by MARF LP in accordance with the MARF LP limited partnership agreement (the "LPA"), except that no portion of the Manzke Trust's waived distribution shall be made to the Manzke Trust or Manzke.

4. Agreement by MAXAM Capital and MAXAM GP to Forego Profits. As part of this Agreement, MAXAM Capital and MAXAM GP agree they shall not be entitled to any additional fees, profits, or expenses for their management or administration of any funds received, either directly or indirectly, or on behalf of MARF LP, from the BLMIS estate. In addition, except with respect to amounts needed to pay reasonable and necessary expenses associated with accounting, tax, legal, regulatory, other costs, or preexisting obligations, all amounts received by MAXAM Capital or MAXAM GP, either directly or indirectly, from any distribution made by the BLMIS estate to MARF LP, shall be distributed solely to investors in MARF LP or as directed by MAXAM Capital (other than to MAXAM Capital or MAXAM GP) in accordance with the LPA.

5. Release by Trustee. In consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, except with respect to the obligations, rights and considerations arising under this Agreement, upon the Closing (as defined in paragraph 10), the Trustee on behalf of himself, BLMIS and its consolidated estates, shall release, acquit and forever discharge all MAXAM Defendants, their officers, directors, partners, and affiliates, all past or present directors, officers, employees, indirect or direct shareholders, limited partners, principals, members, successors, assigns, accountants, attorneys, agents, representatives, administrators, custodians, and customers (collectively, "Releasees") from any and all past, present or future claims or causes of action (including any suit, petition, demand, or other claim in law, equity or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts), of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorneys' fees, costs or disbursements), known or unknown, existing as of the date of the Closing that are, have been, could have been or might in the future be asserted by the Trustee based on, arising out of or in any way related to BLMIS, the MAXAM BLMIS Account or the MAXAM Withdrawals, including, without limitation, the claims against all MAXAM Defendants in the Adversary Proceeding, except for any and all claims to enforce the obligations of the MAXAM Defendants under this Agreement.

The release contained herein shall become effective on the Effective Date (as defined in paragraph 9) and upon completion of the Closing (as defined in paragraph 10) without any further action by any of the Parties.

6. Release by MAXAM Defendants. In consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, except with respect to the obligations, rights and

evidence of any fault, liability or wrongdoing whatsoever.

15. Amendments, Waiver. This Agreement may not be terminated, amended, or modified in any way except in a writing signed by all of the Parties. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

16. Assignability. No party hereto may assign its rights under this Agreement without the prior written consent of each of the other Parties hereto, except that nothing in this Agreement shall prevent MARF LP from assigning all or part of its Total Allowed Claim, without the prior written consent of the Trustee, pursuant to the Bankruptcy Court's November 10, 2010 Order Establishing Procedures for the Assignment of Total Allowed Claims.

17. Successors Bound. This Agreement shall be binding upon and inure to the benefit of each of the Parties and their successors and permitted assigns.

18. No Third Party Beneficiary. Except as expressly provided in paragraphs 5 and 6, the Parties do not intend to confer any benefit by or under this Agreement upon any person or entity other than the Parties hereto and their respective successors and permitted assigns.

19. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New York, without regard to its conflict of laws provisions.

20. Exclusive Jurisdiction. The Parties agree that the Bankruptcy Court shall have exclusive jurisdiction over any and all disputes between or among the Parties, whether in law or equity, arising out of or relating to this Agreement, or any provision thereof, and the Parties hereby consent to and submit to the jurisdiction of the Bankruptcy Court for any such action. The Parties agree that no party shall bring, institute, prosecute or maintain any action to enforce this Agreement, or any provision thereof, in any court other than the Bankruptcy Court. In the event the BLMIS proceeding is closed by a final decree and not reopened, the Parties agree that any dispute arising out of this Agreement, or any provision thereof, may be brought in the United States District Court for the Southern District of New York or the Supreme Court of New York in New York County.

21. Captions and Rules of Construction. The captions in this Agreement are inserted only as a matter of convenience and for reference and do not define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Any reference in this Agreement to a paragraph is to a paragraph of this Agreement. "Includes" and "including" are not limiting.

22. Counterparts, Electronic Copy of Signatures. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same document. The Parties may evidence their execution of this Agreement by delivery to the other Parties of scanned or faxed copies of their signatures with the same effect as the delivery of an original signature.

23. Negotiated Agreement. This Agreement has been fully negotiated by the Parties. Each Party acknowledges and agrees that this Agreement has been drafted jointly, and the rule that ambiguities in an agreement or contract may be construed against the drafter shall not apply in the construction or interpretation of this Agreement.

24. Severability. In the event that any term or provision of this Agreement or any application thereof is deemed to be invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision shall not be affected thereby.

25. Notices. Any notices under this Agreement shall be in writing, shall be effective when received and may be delivered only by hand, by overnight delivery service, by fax, or by electronic transmission to:

If to the Trustee:

Irving H. Picard
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
F: (212) 589-4201
E: ipicard@bakerlaw.com

If to MARF LP, c/o:

James N. Lawlor, Esq.
Wollmuth Maher & Deutsch LLP
One Gateway Center
Newark, New Jersey 07102
F: (973) 733-9292
E: jlawlor@wmd-law.com

If to MAXAM Capital, MAXAM GP,
MARF Ltd., Manzke, Manzke Trust,
Hammond, April or Walker:

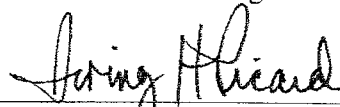
Jonathan D. Cogan, Esq.
Kobre & Kim LLP
800 Third Avenue
New York, New York 10022
F: (212) 488-1220
E: jonathan.cogan@kobrekim.com

with copies to:

David J. Sheehan, Esq.
E: dsheehan@bakerlaw.com
Eric R. Fish, Esq.
E: efish@bakerlaw.com
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
F: (212) 589-4201

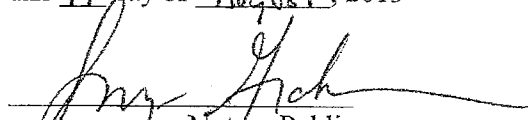
[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed
as of the date first above written.



IRVING H. PICARD

Sworn to and subscribed before me
this 14th day of August, 2013



Notary Public

SONYA M. GRAHAM
Notary Public, State of New York
No. 01GR6133214
Qualified in Westchester County
Commission Expires: 9/12/2017

MAXAM Absolute Return Fund, L.P.

By: [Signature]
Name: Suzanne S. Hamman
Title: Managing Director

Subscribed before me
this [15]th day of [8/13]

[Signature]
Notary Public
LINDA J. VARNUM, Notary Public
My Commission Expires May 11, 2016

MAXAM Capital Management LLC

By: _____
Name:
Title:

Subscribed before me
this []th day of []

Notary Public

MAXAM Capital GP, LLC

By: _____
Name:
Title:

Subscribed before me
this []th day of []

Notary Public

MAXAM Absolute Return Fund, L.P.

By: Sandra Manjke Platt
Name: Sandra manjke platt
Title: CEO

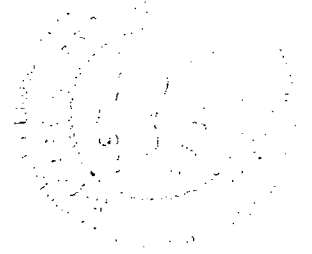


Subscribed before me
this 21st day of [Aug] 2013

Johney Brown
Notary Public
my comm expires 2/10/15

MAXAM Capital Management LLC

By: Sandra Manjke Platt
Name: Sandra manjke platt
Title: CEO

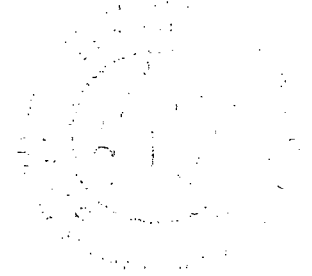


Subscribed before me
this 21st day of [Aug] 2013

Johney Brown
Notary Public
my comm. exp. 2/10/15

MAXAM Capital GP, LLC

By: Sandra Manjke Platt
Name: Sandra Manjke Platt
Title:



Subscribed before me
this 21st day of [Aug] 2013

Johney Brown
Notary Public
my comm. expires 2/10/15

MAXAM Absolute Return Fund, Ltd.

By: Sandra L. Manzke
Name:
Title:

Subscribed before me
this [21]th day of [Aug] 2013
Johnny Brown
Notary Public my comm. expires
2/10/15



Sandra L. Manzke

By: Sandra L. Manzke
Name: Sandra Manzke
Title:

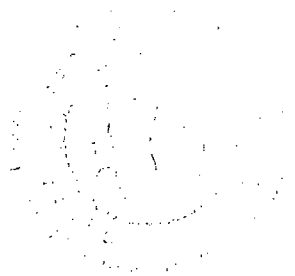
Subscribed before me
this [21]th day of [Aug] 2013
Johnny Brown
Notary Public my comm. expires
2/10/15



Sandra L. Manzke Revocable Trust

By: Sandra L. Manzke
Name: Sandra Manzke
Title:

Subscribed before me
this [21]th day of [Aug] 2013
Johnny Brown
Notary Public my comm. expires
2/10/15



MAXAM Absolute Return Fund, Ltd.

By: Suzanne S. Hamman
Name: Suzanne S. Hamman
Title: Director

Subscribed before me
this [15]th day of [8/13]

Linda J. Varnum
Notary Public

LINDA J. VARNUM, Notary Public
My Commission Expires May 11, 2016

Sandra L. Manzke

By: _____
Name:
Title:

Subscribed before me
this []th day of []

Notary Public

Sandra L. Manzke Revocable Trust

By: _____
Name:
Title:

Subscribed before me
this []th day of []

Notary Public

Suzanne Hammond

By: Suzanne S. Hammond
Name: Suzanne S. Hammond
Title: Managing Director

Subscribed before me
this 15th day of 8/13

Linda J. Varnum
Notary Public

LINDA J. VARNUM, Notary Public
My Commission Expires May 11, 2016

April Manzke

By: _____
Name:
Title:

Subscribed before me
this []th day of []

Notary Public

Walker Manzke

By: _____
Name:
Title:

Subscribed before me
this []th day of []

Notary Public

Suzanne Hammond

By: _____
Name:
Title:

Subscribed before me
this []th day of []

Notary Public

April Manzke - Bukofzer

By: *[Signature]*
Name:
Title:

Subscribed before me
this 21th day of Aug 2013

[Signature]
Notary Public

KRYSTLE R. VOLPE
Notary Public, State of New York
Qualified in Putnam County
Reg. No. 01VO6230756
My Commission Expires 11-08-20 14

Walker Manzke

By: *[Signature]*
Name:
Title:

Subscribed before me
this 21th day of Aug 2013

[Signature]
Notary Public

KRYSTLE R. VOLPE
Notary Public, State of New York
Qualified in Putnam County
Reg. No. 01VO6230756
My Commission Expires 11-08-20 14

EXHIBIT "B"

MAXAM ABSOLUTE RETURN FUND, L.P. CUSTOMER CLAIM

CONFIDENTIAL TREATMENT REQUESTED

MAXAM Capital Management LLC

Account Number 1 M0232

Bernard L. Madoff Investment Securities LLC
Case No 08-01789-BRL

U.S. Bankruptcy Court for the Southern District of New York

Claim Number: 004554

CUSTOMER CLAIM

Date Received _____

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008

RECEIVED
MAR 02 2009

(Please print or type)

Name of Customer: MAXAM Absolute Return Fund LP/ MAXAM Capital Management LLC

Mailing Address: 16 Thorndal Circle

City: Darien State: CT Zip: 06820

Account No.: 1 M0232

Taxpayer I.D. Number (Social Security No.): 20-4964422

NOTE: BEFORE COMPLETING THIS CLAIM FORM, BE SURE TO READ CAREFULLY THE ACCOMPANYING INSTRUCTION SHEET. A SEPARATE CLAIM FORM SHOULD BE FILED FOR EACH ACCOUNT AND, TO RECEIVE THE FULL PROTECTION AFFORDED UNDER SIPA, ALL CUSTOMER CLAIMS MUST BE RECEIVED BY THE TRUSTEE ON OR BEFORE March 4, 2009. CLAIMS RECEIVED AFTER THAT DATE, BUT ON OR BEFORE July 2, 2009, WILL BE SUBJECT TO DELAYED PROCESSING AND TO BEING SATISFIED ON TERMS LESS FAVORABLE TO THE CLAIMANT. PLEASE SEND YOUR CLAIM FORM BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED.

1. Claim for money balances as of December 11, 2008:

a. The Broker owes me a Credit (Cr.) Balance of \$ 215,287,000.00

b. I owe the Broker a Debit (Dr.) Balance of \$ 0

c. If you wish to repay the Debit Balance,
please insert the amount you wish to repay and
attach a check payable to "Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC."

If you wish to make a payment, it must be enclosed
with this claim form. \$ _____

d. If balance is zero, insert "None." Broker owes us \$ 215,287,000.00

CONFIDENTIAL TREATMENT REQUESTED MAXAM Capital Management LLC

Account Number 1 M0232

2. Claim for securities as of December 11, 2008:

PLEASE DO NOT CLAIM ANY SECURITIES YOU HAVE IN YOUR POSSESSION.

- | | | |
|---|-------------------------|-----------|
| | <u>YES</u> | <u>NO</u> |
| a. The Broker owes me securities | Please see note below * | |
| b. I owe the Broker securities | | <u>NO</u> |
| c. If yes to either, please list below: | | |

Date of Transaction (trade date)	Name of Security	Number of Shares or Face Amount of Bonds	
		The Broker Owes Me (Long)	I Owe the Broker (Short)

* Per account statements received from the Broker, we believe the Broker owes us securities. However, based on the Creditors Meeting held by the SIPC Trustee on February 20, 2009 we understand no such securities exist. Please see the attached Exhibits for the November 2008 account statement and the securities purportedly owed by the Broker to MAXAM Absolute Return Fund LP.

Proper documentation can speed the review, allowance and satisfaction of your claim and shorten the time required to deliver your securities and cash to you. Please enclose, if possible, copies of your last account statement and purchase or sale confirmations and checks which relate to the securities or cash you claim, and any other documentation, such as correspondence, which you believe will be of assistance in processing your claim. In particular, you should provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of your deposits of cash or securities with the Debtor from as far back as you have documentation. You should also provide all documentation or information regarding any withdrawals you have ever made or payments received from the Debtor.

Please explain any differences between the securities or cash claimed and the cash balance and securities positions on your last account statement. If, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please be sure to provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received.

PLEASE CHECK THE APPROPRIATE ANSWER FOR ITEMS 3 THROUGH 9.

CONFIDENTIAL TREATMENT REQUESTED MAXAM Capital Management LLC

Account Number 1 M0232

NOTE: IF "YES" IS MARKED ON ANY ITEM, PROVIDE A DETAILED EXPLANATION ON A SIGNED ATTACHMENT. IF SUFFICIENT DETAILS ARE NOT PROVIDED, THIS CLAIM FORM WILL BE RETURNED FOR YOUR COMPLETION.

- | | <u>YES</u> | <u>NO</u> |
|---|------------|-------------|
| 3. Has there been any change in your account since December 11, 2008? If so, please explain. | _____ | NO
_____ |
| 4. Are you or were you a director, officer, partner, shareholder, lender to or capital contributor of the broker? | _____ | NO
_____ |
| 5. Are or were you a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the broker? | _____ | NO
_____ |
| 6. Are you related to, or do you have any business venture with, any of the persons specified in "4" above, or any employee or other person associated in any way with the broker? If so, give name(s) | _____ | NO
_____ |
| 7. Is this claim being filed by or on behalf of a broker or dealer or a bank? If so, provide documentation with respect to each public customer on whose behalf you are claiming. | _____ | NO
_____ |
| 8. Have you ever given any discretionary authority to any person to execute securities transactions with or through the broker on your behalf? Give names, addresses and phone numbers. | _____ | NO
_____ |
| 9. Have you or any member of your family ever filed a claim under the Securities Investor Protection Act of 1970? If so, give name of that broker. | _____ | NO
_____ |

Please list the full name and address of anyone assisting you in the preparation of this claim form: Jonathan D. Cogan, Esq.
Kobre & Kim LLP, 800 Third Avenue, New York NY 10022

CONFIDENTIAL TREATMENT REQUESTED

MAXAM Capital Management LLC

Account Number 1 M0232


If you cannot compute the amount of your claim, you may file an estimated claim. In that case, please indicate your claim is an estimated claim.

IT IS A VIOLATION OF FEDERAL LAW TO FILE A FRAUDULENT CLAIM. CONVICTION CAN RESULT IN A FINE OF NOT MORE THAN \$50,000 OR IMPRISONMENT FOR NOT MORE THAN FIVE YEARS OR BOTH.

THE FOREGOING CLAIM IS TRUE AND ACCURATE TO THE BEST OF MY INFORMATION AND BELIEF.

Date February 26, 2009

Signature



Date _____

Signature _____

(If ownership of the account is shared, all must sign above. Give each owner's name, address, phone number, and extent of ownership on a signed separate sheet. If other than a personal account, e.g., corporate, trustee, custodian, etc., also state your capacity and authority. Please supply the trust agreement or other proof of authority.)

**This customer claim form must be completed and mailed promptly,
together with supporting documentation, etc. to:**

Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201

EXHIBIT "C"

PROPOSED ORDER

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
Eric R. Fish
Email: efish@bakerlaw.com

Hearing Date: September 17, 2013 at 10:00 a.m.
Objection Deadline: September 10, 2013

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

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

In re:
BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

MAXAM ABSOLUTE RETURN FUND, L.P.;
MAXAM ABSOLUTE RETURN FUND, LTD.;
MAXAM CAPITAL MANAGEMENT LLC;
MAXAM CAPITAL GP LLC; SANDRA L.
MANZKE REVOCABLE TRUST; SANDRA L.
MANZKE, as trustee and individually; SUZANNE
HAMMOND; WALKER MANZKE; and APRIL
BUKOFER MANZKE;

Defendants.

Adv. Pro. No. 08-01789 (BRL)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 10-05342 (BRL)

ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE AND RULES 2002 AND 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE APPROVING A SETTLEMENT AGREEMENT BY AND BETWEEN THE TRUSTEE AND MAXAM ABSOLUTE RETURN FUND, L.P.; MAXAM ABSOLUTE RETURN FUND, LTD.; MAXAM CAPITAL MANAGEMENT LLC; MAXAM CAPITAL GP LLC; SANDRA L. MANZKE REVOCABLE TRUST; SANDRA L. MANZKE; SUZANNE HAMMOND; WALKER MANZKE; AND APRIL BUKOFSER MANZKE

Upon the motion (the “Motion”)¹ of Irving H. Picard (the “Trustee”) as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC and the estate of Bernard L. Madoff, seeking entry of an order, pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, approving the agreement, by and between the Trustee, on one the hand, and MAXAM Absolute Return Fund, L.P., MAXAM Absolute Return Fund, Ltd., MAXAM Capital Management LLC, MAXAM Capital GP LLC, Sandra L. Manzke Revocable Trust, Sandra L. Manzke, Suzanne Hammond, Walker Manzke and April Bukofser Manzke (collectively, the “MAXAM Defendants”), on the other hand, as more particularly set forth in the Agreement annexed hereto (the “Agreement”); and it appearing that due and sufficient notice has been given to all parties in interest as required by Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure; and the Court having considered the Affidavit of Irving H. Picard in support of the Motion; and it further appearing the relief sought in the Motion is appropriate based upon the record of the hearing held before this Court to consider the Motion; and it further appearing that this Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and after due deliberation; and sufficient cause

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

appearing therefor; it is

ORDERED, that the Motion is granted in its entirety; and it is further

ORDERED, that the Agreement between the Trustee, on the one hand, and the MAXAM Defendants, on the other hand, is hereby approved and authorized; and it is further

ORDERED, that the Trustee and the MAXAM Defendants shall each comply with and carry out the terms of the Agreement; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York
_____, 2013

HONORABLE BURTON R. LIFLAND
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT "D"

AFFIDAVIT OF IRVING H. PICARD

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

In re:
BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA LIQUIDATION

(Substantively Consolidated)

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

Adv. Pro. No. 10-05342 (BRL)

v.

MAXAM ABSOLUTE RETURN FUND, L.P.;
MAXAM ABSOLUTE RETURN FUND, LTD.;
MAXAM CAPITAL MANAGEMENT LLC;
MAXAM CAPITAL GP LLC; SANDRA L.
MANZKE REVOCABLE TRUST; SANDRA L.
MANZKE, as trustee and individually; SUZANNE
HAMMOND; WALKER MANZKE; and APRIL
BUKOFSER MANZKE;

Defendants.

**AFFIDAVIT OF IRVING H. PICARD, TRUSTEE, IN SUPPORT OF MOTION FOR
ENTRY OF ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY
CODE AND RULES 2002 AND 9019 OF THE FEDERAL RULES OF BANKRUPTCY
PROCEDURE APPROVING AN AGREEMENT BY AND BETWEEN THE TRUSTEE
AND MAXAM ABSOLUTE RETURN FUND, L.P.; MAXAM ABSOLUTE RETURN
FUND, LTD.; MAXAM CAPITAL MANAGEMENT LLC; MAXAM CAPITAL GP
LLC; SANDRA L. MANZKE REVOCABLE TRUST; SANDRA L. MANZKE;
SUZANNE HAMMOND; WALKER MANZKE; AND APRIL BUKOFSER MANZKE**

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Irving H. Picard, being duly sworn, hereby attests as follows:

1. I am the trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the estate of Bernard L. Madoff (“Madoff,”

and together with BLMIS, collectively, the “Debtors”). I am familiar with the affairs of the Debtors. I respectfully submit this Affidavit in support of the motion (the “Motion”) seeking entry of an order, pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, approving a settlement agreement (the “Agreement”) by and among the Trustee on the one hand, and MAXAM Absolute Return Fund, L.P., MAXAM Absolute Return Fund, Ltd., MAXAM Capital Management LLC, MAXAM Capital GP LLC, Sandra L. Manzke Revocable Trust, Sandra L. Manzke, Suzanne Hammond, Walker Manzke and April Bukofser Manzke (collectively the “MAXAM Defendants”), on the other hand.

2. I make this Affidavit based upon my own personal knowledge or upon information that I believe to be true.

3. All capitalized terms not defined herein have the meaning ascribed to them in the Motion.

4. I believe that the terms of the Agreement fall well above the lowest point in the range of reasonableness and, accordingly, the Agreement should be approved by this Court. The Agreement resolves all issues regarding the asserted and unasserted claims against the MAXAM Defendants (the “Avoiding Power Claims”) without the need for further protracted, costly, and uncertain litigation. I recognize that further litigating the Avoiding Power Claims would undoubtedly be extremely complex, create additional delay, and would involve both litigation risk and difficulties associated with collection.

5. This settlement, including the \$97.8 million payment by the MAXAM Defendants, is a global settlement that resolves all issues pertaining to the Trustee’s claims against the MAXAM Defendants without the need for further protracted, costly, and uncertain litigation. As part of this settlement, the Trustee on the one hand, and the MAXAM Defendants, on the

other hand, have reached a good faith, complete, and total compromise as to any and all claims the Trustee has asserted against the MAXAM Defendants, including, but not limited to, claims the Trustee has for avoidable direct transfers by BLMIS during the 90-day and two-year periods prior to the Filing Date,¹ fees and interest payments, and other claims the Trustee had against the MAXAM Defendants.

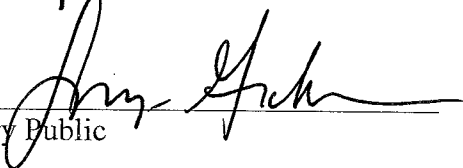
6. The Agreement also greatly furthers the interests of the customers of BLMIS with allowed claims by adding \$97.8 million to the Fund of Customer Property.

7. Given the potential impact of these issues, and the complexities involved in proceeding with further litigation, I have determined, in my business judgment, that the Agreement represents a fair compromise of the Avoiding Power Claims.

8. In sum, I respectfully submit that the Agreement should be approved (a) to avoid additional lengthy and burdensome litigation, and (b) because the Agreement represents a reasonable compromise of the Avoiding Power Claims.


IRVING H. PICARD

Sworn to before me this 23rd
day of August, 2013


Notary Public

Notary Public for the State of New York
My Comm. Expires 12/31/14
Qualified in Westchester County
Commission No. 40464717

¹ I am not aware of any direct transfers by BLMIS to the MAXAM Defendants beyond the two year period prior to the Filing Date.