

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

Esterina Giuliani

Email: egiuliani@bakerlaw.com

Keith R. Murphy

Email: kmurphy@bakerlaw.com

Hearing Date: April 27, 2016 at 10:00 a.m.

Objection Deadline: April 20, 2016

*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**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

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

SIPA LIQUIDATION

(Substantively Consolidated)

**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
SILVER CREEK LONG/SHORT HOLDINGS, L.L.C.**

TO: THE HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE:

Irving H. Picard (the “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”)¹ and the substantively consolidated Chapter 7 estate of Bernard L. Madoff (“Madoff,” and together with BLMIS, the “Debtors”), by and through his undersigned counsel, submits this 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.* (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 Release and Settlement Agreement (the “Agreement”)² by and between the Trustee, on the one hand, and Silver Creek Long/Short Holdings, L.L.C. (“L/S Holdings”), on the other hand. In support of the Motion, the Trustee respectfully represents as follows:

PRELIMINARY STATEMENT

1. The Agreement represents a good faith settlement between the Trustee and L/S Holdings as to any and all disputes between them arising out of L/S Holdings’ investments with the Rye Select Broad Market Fund, LP (“Broad Market Fund”) and Rye Select Broad Market Prime Fund, LP (“Prime Fund”)—both of which were BLMIS feeder funds. This pre-litigation settlement will benefit the customer property fund by \$9 million and will increase the distribution to BLMIS customers with allowed claims without the need for potentially lengthy, costly, and complex litigation for which there is no guarantee of recovery. The Trustee therefore

¹ Further citations to SIPA will omit “15 U.S.C.” and refer only to the relevant sections of SIPA.

² The form of Agreement is attached hereto as Exhibit “A.”

respectfully requests that the Court approve this settlement.

BACKGROUND

2. On December 11, 2008 (the “Filing Date”),³ 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.

3. 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 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.

4. 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.

5. 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,

³ 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.

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.

6. 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.

L/S HOLDINGS

7. L/S Holdings is a fund of funds managed by Silver Creek Capital Management, L.L.C. L/S Holdings had investments with the Broad Market Fund and Prime Fund beginning in 1994 and 1998, respectively, until 2004. Both the Broad Market Fund and Prime Fund—managed by Tremont Partners, Inc.—were BLMIS feeder funds.

8. The Agreement resolves any and all disputes arising out of redemptions received by L/S Holdings from the Broad Market Fund and Prime Fund, substantially all of which occurred in 2004.

THE TREMONT SETTLEMENT

9. In December 2010, the Trustee brought an adversary proceeding against Tremont Partners, Inc., the Broad Market Fund, the Prime Fund, and a number of other domestic and foreign investment funds, their affiliates, executives, and parent corporations under the caption *Picard v. Tremont Group Holdings, Inc. et al.*, Adv. Pro. No. 10-05310 (the “Tremont Action”). The complaint brought in the Tremont Action alleged that the defendants knew or should have known of fraud at BLMIS and sought to avoid and recover initial transfers of customer property from BLMIS amounting to approximately \$2.1 billion. (See Tremont Action,

ECF No. 4.)

10. As set forth in the complaint in the Tremont Action, the Broad Market Fund had a direct account with BLMIS (account number 1T0027). (*See* Tremont Action, ECF No. 4, ¶ 36.) The Prime Fund also had a direct account with BLMIS (account number 1C1260). (*See id.*, ¶ 38.) As also alleged in the Tremont Action, BLMIS transferred \$252,000,000 to the Broad Market Fund during the six years prior to the Filing Date. (*See id.*, ¶ 271) BLMIS transferred \$945,000,000 to the Prime Fund during the six years prior to the Filing Date. (*See id.*)

11. On September 22, 2011, the Bankruptcy Court approved a settlement between the Trustee and defendants named in the Tremont Action (collectively, the “Tremont Settling Defendants”)—which include the Broad Market Fund and Prime Fund. Under the terms of the settlement agreement, the Tremont Settling Defendants collectively were to pay (and did pay) \$1.025 billion for the benefit of the BLMIS estate. (*See* Tremont Action, ECF Nos. 17, 38.)

12. Because the Trustee compromised and did not recover the full amount of the initial transfers sought in the Tremont Action, the settlement agreement provided that the settlement payments made by the Tremont Settling Defendants “shall not, and are not, intended to release, waive, prejudice, or limit the Trustee’s rights and ability to pursue any actions or claims . . . available to him against any non-party to the Agreement, including but not limited to,” a number of entities that includes L/S Holdings. (*See* Tremont Action, ECF No. 17, Exh. A, ¶ 4.)

13. The Bankruptcy Court approved the Tremont settlement by Order Granting Trustee’s Motion for Entry of Order Approving Agreement. (*See* Tremont Action, ECF No. 38.) On appeal from that Order, the District Court affirmed the Bankruptcy Court’s order approving the settlement. *See In re Bernard L. Madoff Inv. Secs., LLC (Picard v. Tremont Group Holdings,*

Inc.), No. 11 CV 7330 GBD, 2012 WL 2497270 (S.D.N.Y. Jun. 27, 2012). A subsequent appeal to the Second Circuit was dismissed pursuant to a stipulation of the parties that was So Ordered on October 25, 2012. *See In re: Bernard L. Madoff Investment Securities LLC*, Docket No. 12-3052, ECF No. 56. The settlement closed on or about November 6, 2012.

POTENTIAL CLAIMS

14. Prior to negotiating the Agreement, the Trustee conducted a comprehensive investigation of L/S Holdings' investments with the Broad Market Fund and Prime Fund, including a thorough review of documents obtained by the Trustee during his investigation into investments in the Broad Market Fund and the Prime Fund, including documents relating to investments by L/S Holdings. As a result, the Trustee has reviewed extensive information relevant to his potential claims against L/S Holdings.

15. The Trustee's investigation revealed that L/S Holdings redeemed substantially all of its investments from the Broad Market Fund and Prime Fund in 2004. The Broad Market Fund and the Prime Fund transferred a total of approximately \$64.4 million to L/S Holdings between April and August 2004. The total amount of transfers from the Broad Market Fund and the Prime Fund to L/S Holdings within six years of the Filing Date is therefore approximately \$64.4 million. L/S Holdings did not receive any transfers within two years of the Filing Date. Records also indicate that L/S Holdings redeemed approximately \$28 million more during the six-year period prior to the Filing Date than it had invested in the Broad Market Fund and Prime Fund.

16. Based on his investigation and the allegations supporting his Tremont Action, the Trustee asserts that he has claims pursuant to Section 550 of the Bankruptcy Code and/or other statutory and common law grounds against L/S Holdings, as a subsequent transferee of funds

originating from BLMIS, based on the \$64.4 million in redemptions L/S Holdings received from the Broad Market Fund and the Prime Fund in 2004.

17. L/S Holdings denies the factual and legal validity of the Trustee's claims and has asserted that it would move to dismiss any action filed against it by the Trustee. L/S Holdings denies that the Trustee can assert any claim for which any relief can be granted against L/S Holdings and related entities. Among other defenses, L/S Holdings asserts that the safe harbor provisions of Section 546(e) of the Bankruptcy Code would prevent the Trustee from recovering any amounts from it.

18. Since September 2012, the Trustee and L/S Holdings have entered into several agreements tolling the applicable statute of limitations for any potential action the Trustee could bring against L/S Holdings.

19. Pursuant to these agreements, the Supreme Court's order on June 22, 2015 denying the Trustee's writ of certiorari in the case of *Picard v. Ida Fishman Revocable Trust*, U.S. Supreme Court Case Number 14-1129, established the date on which the tolling period was going to conclude. The parties, however, agreed to toll the statute of limitations further and thereafter engaged in discussions that resulted in an agreed pre-litigation resolution that obviated the need for the Trustee to commence an adversary proceeding.

20. The parties engaged in arms-length and extensive negotiations concerning the claims and defenses over a period of several months.

21. After a thorough review and consideration of the relevant information, as well as a thorough and deliberate consideration of the uncertainty and risks of litigation—including risks specific to potential claims against L/S Holdings (as discussed more thoroughly below) and risks inherent in litigation generally—the Trustee, in the exercise of his business judgment, has determined that it is appropriate to amicably resolve this matter, rather than institute litigation.

OVERVIEW OF THE AGREEMENT

22. The principal terms of the Agreement are as follows:

- L/S Holdings will pay or cause to be paid \$9,000,000 to the Trustee for the benefit of the Fund of Customer Property within ten (10) days of the receipt of an order approving the Agreement that is no longer subject to appeal, review, or rehearing.
- The Trustee will release, acquit, and forever discharge L/S Holdings (and related entities) on the specific terms set forth in the Agreement.
- L/S Holdings (on behalf of itself and related entities) will release, acquit, and forever discharge the Trustee and all his agents and BLMIS and its consolidated estate on the specific terms set forth in the Agreement.

RELIEF REQUESTED

23. 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 “B” approving the Agreement.

LEGAL BASIS

24. Bankruptcy Rule 9019(a) provides, 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 B.R. 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)).

25. 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. “[T]he court need not conduct a ‘mini-trial’ to determine the merits of the underlying litigation.” *In re Purified Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993).

26. In deciding whether a particular 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)).

27. 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 Grp.*, 134 B.R. at 505. Even though the Court has discretion to approve settlements and must independently evaluate the reasonableness of the settlement, *In re Rosenberg*, 419 B.R. 532, 536 (Bankr. E.D.N.Y. 2009), the business judgment of the trustee and his counsel should be considered in determining whether a settlement is fair and equitable. *In re Chemtura Corp.*, 439 B.R. at 594. 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 Grp.*, 134 B.R. at 505 (quoting *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976)).

28. The Agreement falls well above the lowest point in the range of reasonableness. The Agreement furthers the interest of BLMIS customers by recovering \$9 million without allowing any additional claims against the BLMIS estate. The Agreement resolves all potential claims between the Trustee and L/S Holdings (and certain related entities) with respect to the transfers L/S Holdings may have received from the Broad Market Fund and the Prime Fund. The Agreement also avoids the cost and delay of what could otherwise be lengthy, contentious, and uncertain litigation involving complex issues—including issues related to Section 546(e) and the alleged knowledge of L/S Holdings. (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 “C”).

29. Had the Trustee filed a complaint, he would have had to overcome a motion to dismiss at the initial stage of the litigation. Among other defenses, L/S Holdings indicated that it would move to dismiss the entirety of any complaint against it, based on Section 546(e) of the

Bankruptcy Code, because all of the transfers at issue took place beyond two years of the Filing Date. Therefore, L/S Holdings contends that as a threshold issue, the Trustee would have to overcome the “actual knowledge” standard of pleading in order to bring any claims against it, which L/S Holdings contends the Trustee could not do. *See SIPC v. BLMIS*, No. 12 Misc. 115 (JSR), 2013 WL 1609154, at *4 (S.D.N.Y. Apr. 15, 2013).

30. If the Trustee were successful in overcoming an anticipated motion to dismiss, the ensuing litigation would then likely be complex and contentious. Indeed, the litigation would involve a lengthy discovery period, an inevitable summary judgment motion, and then trial if the case were to survive summary judgment.

31. In contrast, the Agreement furthers the interests of BLMIS customers by immediately adding \$9 million to the Fund of Customer Property, without allowing any claims against the estate in connection with such payments.

CONCLUSION

32. In sum, the Trustee believes that the terms of the Agreement fall well above the lowest point in the range of reasonableness. The Agreement will bring an additional \$9 million to the Fund of Customer Property and resolves all potential claims related to L/S Holdings’ investments in the Broad Market Fund and the Prime Fund. It also avoids litigation that may be lengthy, burdensome, risky, and expensive. The Trustee further believes that the Agreement 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

33. 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, and (v) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Dana M. Seshens. The Trustee also has provided notice to all parties who have entered an appearance through the ECF Filing System and to all interested parties by email or regular U.S. Mail.

WHEREFORE, the Trustee respectfully requests entry of an Order substantially in the form of Exhibit “B” granting the relief requested in the Motion.

Respectfully submitted,

Dated: New York, New York
March 25, 2016

BAKER & HOSTETLER LLP

By: /s/ Eric Fish
David J. Sheehan
Email: dsheehan@bakerlaw.com
Eric R. Fish
Email: efish@bakerlaw.com
Esterina Giuliani
Email: egiuliani@bakerlaw.com
Keith R. Murphy
Email: kmurphy@bakerlaw.com

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 Estate of Bernard L. Madoff*

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
Esterina Giuliani
Email: egiuliani@bakerlaw.com
Keith R. Murphy
Email: kmurphy@bakerlaw.com

Hearing Date: April 27, 2016 at 10:00 a.m.
Objection Deadline: April 20, 2016

*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**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

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

SIPA LIQUIDATION

(Substantively Consolidated)

**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 SILVER CREEK LONG/SHORT HOLDINGS, L.L.C.**

PLEASE TAKE NOTICE that Irving H. Picard (the “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-III, and the substantively consolidated Chapter 7 estate of Bernard L. Madoff (“Madoff”), by and through his undersigned counsel, will move before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge, at the United States Bankruptcy Court, Alexander Hamilton Customs House, One Bowling Green, New York, New York 10004, on **April 27, 2016 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 and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, approving a certain settlement agreement by and between the Trustee on the one hand, and Silver Creek Long/Short Holdings, L.L.C. (“L/S Holdings”), 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 April 20, 2016** (with a courtesy copy delivered to the Chambers of the Honorable Stuart M. Bernstein) 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 and Keith R. Murphy. Any objections must specify the interest that the objecting party has in these proceedings and the specific basis of any objection to the Motion.

PLEASE TAKE FURTHER NOTICE that failure to file timely objections may result in

the entry of an order granting the relief requested in the Motion without further notice to any party or an opportunity to be heard.

Dated: New York, New York
March 25, 2016

BAKER & HOSTETLER LLP

By: /s/ Eric R. Fish

David J. Sheehan

Email: dsheehan@bakerlaw.com

Eric R. Fish

Email: efish@bakerlaw.com

Esterina Giuliani

Email: egiuliani@bakerlaw.com

Keith R. Murphy

Email: kmurphy@bakerlaw.com

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 Estate of Bernard L. Madoff*

EXHIBIT "A"

RELEASE AND SETTLEMENT AGREEMENT

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement, dated as of March 16, 2016 ("Agreement") is made by and between Irving H. Picard, in his capacity as the trustee ("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 of Bernard L. Madoff ("Madoff") pending before the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), and Silver Creek Long/Short Holdings, L.L.C. ("L/S Holdings"). The Trustee and L/S Holdings shall be hereinafter referred to individually as a "Party" and collectively as the "Parties."

BACKGROUND

A. BLMIS and its predecessor 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 ("SEC") filed a complaint in the United States District Court for the Southern District of New York (the "District Court") against BLMIS and Madoff.

C. On December 15, 2008, the District 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 and removed the case to the Bankruptcy Court under section 5(b)(4) of SIPA, where it is pending as Case No. 08-01789 (SMB) (the "SIPA Proceeding"). The Trustee is duly qualified to serve and act on behalf of the BLMIS estate (the "BLMIS Estate"). By Order dated June 9, 2009, the estate of Madoff was substantively consolidated with the BLMIS Estate.

D. Under SIPA, the Trustee is charged with the responsibility to marshal and liquidate the assets of BLMIS for distribution to BLMIS customers and others in accordance with SIPA in satisfaction of allowed claims, including through the recovery of avoidable transfers such as preference payments and fraudulent transfers made by BLMIS.

E. The Trustee's claims against transferees who received avoidable transfers from BLMIS arise under SIPA, including sections 78fff(b), 78fff-1(a) and 78fff-2(c)(3), sections 105(a), 541, 544, 547, 548, 550(a) and 551 of the Bankruptcy Code, the New York Debtor and Creditor Law § 270 *et seq.* (McKinney 2001) and other applicable laws.

F. On December 7, 2010, the Trustee commenced an adversary proceeding in the Bankruptcy Court against Tremont Group Holdings, Inc. and related entities (Adv. Pro. No. 10-5310) (the "Tremont Lawsuit"), including the Rye Select Broad Market Fund, LP ("Broad Market Fund") and Rye Select Broad Market Prime Fund, LP ("Prime Fund"). The Tremont Lawsuit sought, *inter alia*, to avoid and recover all transfers from BLMIS made to the named defendants in the Tremont Lawsuit on the basis that the transfers were fraudulent.

G. On September 22, 2011, the Bankruptcy Court approved a settlement in the Tremont Lawsuit, including a settlement of Trustee's claims against the Broad Market Fund and

Prime Fund (the "Tremont Settlement"). The Tremont Settlement was appealed, and the District Court entered an order dismissing the appeal on June 26, 2012. The District Court's order was then appealed to the Second Circuit, however, that appeal was subsequently withdrawn on or about October 25, 2012. The Tremont Settlement subsequently closed on or about November 6, 2012 pursuant to its terms.

H. The Tremont Settlement provides that the making of settlement payments by the Tremont settling defendants "shall not, and are not, intended to release, waive, prejudice, or limit Trustee's rights and ability to pursue any actions or claims . . . available to him against any non-party to the Agreement, including, but not limited to," a number of entities that includes L/S Holdings.

I. The Trustee asserts that he has claims pursuant to Section 550 of the Bankruptcy Code and/or other statutory and common law grounds against L/S Holdings and other entities, funds and/or individuals related to L/S Holdings (collectively, the "Silver Creek Parties"), as subsequent transferees of funds originating from BLMIS, based on transfers received from the Broad Market Fund ("Broad Market Fund Subsequent Transfers") and from the Prime Fund ("Prime Fund Subsequent Transfers").

J. In connection with this settlement, the Silver Creek Parties do not admit or concede, and expressly deny, the factual basis and legal validity of the Trustee's claims.

K. The Parties previously entered into a series of stipulations tolling the statute of limitations for claims that could be brought by Trustee.

L. The Parties have engaged in pre-litigation, arms-length discussions in an attempt to resolve the Trustee's claims and/or potential claims against the Silver Creek Parties prior to filing a complaint with the Bankruptcy Court. Such discussions have resulted in this Agreement.

M. The Parties now desire to settle any and all claims, potential claims, and disputes the Parties may have against each other with respect to the Broad Market Fund Subsequent Transfers and Prime Fund Subsequent Transfers without the expense, delay and uncertainty of litigation.

NOW, THEREFORE, it is hereby **AGREED** by and between the Parties to the Agreement, for the good and valuable consideration set forth herein, the adequacy and sufficiency of which is recognized for all purposes, that:

1. Payment to Trustee. L/S Holdings shall pay or cause to be paid to the Trustee within ten (10) days of the Effective Date (as defined by paragraph 5) the sum of Nine Million United States Dollars (\$9,000,000.00) (the "Settlement Payment") in full and final settlement and satisfaction of all claims or potential claims arising out of or related to the Broad Market Fund Subsequent Transfers and the Prime Fund Subsequent Transfers. The Settlement Payment may be made by: (i) wire transfer of immediately available funds to Trustee's account (subject to Trustee providing appropriate wire instructions), or (ii) bank or cashier's check made payable to "Irving H. Picard, Trustee for the liquidation of Bernard L. Madoff Investment Securities LLC,"

provided that satisfaction of Trustee's obligations hereunder shall be conditioned on the collection of such funds by Trustee.

2. Release by the 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 receipt of the Settlement Payment (the "Release Effectiveness Date"), the Trustee on behalf of himself, BLMIS, and its consolidated estates, shall release, acquit, and forever discharge L/S Holdings and its current and former affiliated entities, members, managing members, and individuals, including, but not limited to, Silver Creek Long/Short Partners, L.P., Silver Creek Capital Management, L.L.C., Eric Dillon, and each of their respective representatives, agents, family members, successors and/or assigns (as applicable) (collectively referred to herein as the "Silver Creek Released Parties"), 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 Effective Date that are, have been, could have been, or might in the future be asserted by the Trustee against the Silver Creek Released Parties based on, arising out of, or in any way related to the Broad Market Fund Subsequent Transfers and Prime Fund Subsequent Transfers, except that the Trustee retains the right to enforce the terms and conditions of this Agreement.

3. Release by L/S Holdings. 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 Release Effectiveness Date, L/S Holdings, on behalf of itself and all other Silver Creek Released Parties, shall release, acquit, and forever discharge the Trustee and all his agents, representatives, attorneys, employees, and professionals, and BLMIS and its consolidated estate (collectively referred to herein as the "Trustee Released Parties"), 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 Effective Date (as defined in paragraph 5) that are, have been, could have been, or might in the future be asserted by the Silver Creek Released Parties against the Trustee Released Parties based on, arising out of, or in any way related to BLMIS or Madoff, including the Broad Market Fund Subsequent Transfers and Prime Fund Subsequent Transfers, except that L/S Holdings retains the right to enforce the terms and conditions of this Agreement.

4. Unknown Claims. Unknown Claims shall mean any released claims pursuant to paragraphs 2 and 3 of the Agreement (“Released Claims”) that the Parties 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 2 and 3 of this Agreement, the Parties 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 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties 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. The Trustee Released Parties and/or the Silver Creek Released Parties may hereafter discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Released Claims, but the Parties shall expressly have and be deemed to have fully, finally, and forever settled and released any and all Released 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 now existing or coming into existence in the future, including conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Parties 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.

5. Court Approval; Effective Date; Termination. This Agreement is subject to, and shall become effective and binding on the Parties 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 (“Effective Date”). 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, consents, and agreements contained in the Agreement (other than this paragraph) shall be void; and (c) neither the Trustee nor L/S Holdings may use or rely on any such statement, consent, or agreement in any public statement or litigation involving the SIPA Proceeding, or any case or proceeding relating to BLMIS, or Madoff.

6. L/S Holdings' and Trustee's Authority. L/S Holdings represents and warrants to the Trustee on behalf of itself and the other Silver Creek Released Parties that, as of the date hereof, it has the full power, authority, and legal right to execute and deliver, and to perform its obligations under, this Agreement and has taken all necessary action to authorize the execution, delivery, and performance of its obligations under this Agreement and the obligations of the other Silver Creek Released Parties with respect to Paragraphs 3 and 4 of this Agreement. The Trustee represents and warrants to L/S Holdings on behalf of himself and the other Trustee Released Parties that, as of the date hereof, and subject to the approval of the Bankruptcy Court as set forth in paragraph 5 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 and the obligations of the other Trustee Released Parties with respect to Paragraphs 2 and 4 of this Agreement.

7. 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.

8. Entire Agreement. This Agreement constitutes the entire agreement and understanding between and among the Parties and supersedes all prior agreements, representations, and understandings concerning the subject matter hereof, with the exception of any past and future agreements between the Parties to toll the applicable statute of limitations.

9. 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 may not be offered or received in evidence or otherwise referred to in any civil, criminal, or administrative action or proceeding as evidence of any fault, liability, or wrongdoing whatsoever.

10. Amendment; Waiver. This Agreement may not be terminated, amended or modified in any way except in a written instrument signed by all 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.

11. Assignability. No Party hereto may assign its rights under this Agreement without the prior written consent of each of the other Parties hereto.

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

13. No Third Party Beneficiary. Except as otherwise reflected herein, 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.

14. 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.

15. 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. In the event the SIPA 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.

16. Expenses. Each Party shall bear its respective expenses relating to or arising out of this Agreement, including, but not limited to, fees for attorneys, experts, consultants, accountants and other advisors.

17. 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.

18. Counterparts, Electronic Copy of Signatures. This Agreement may be executed and delivered in any number of counterparts, each of which when 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.

19. 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.

20. 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.

21. 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
Facsimile: (212) 589-4201
E-mail: ipicard@bakerlaw.com

If to L/S Holdings, c/o:

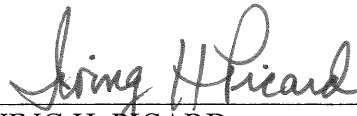
Dana M. Seshens
Davis, Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Facsimile: (212) 701-5855
Email: dana.seshens@davispolk.com

with copies to:

Eric R. Fish
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Facsimile: (212) 589-4201
E-mail: efish@bakerlaw.com

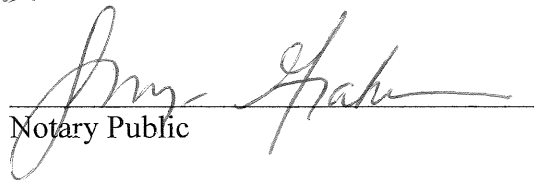
[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed
and delivered as of the date set forth above.



IRVING H. PICARD,
AS TRUSTEE FOR THE LIQUIDATION
PROCEEDINGS OF BERNARD L.
MADOFF INVESTMENT SECURITIES
LLC AND THE SUBSTANTIVELY
CONSOLIDATED BANKRUPTCY CASE
OF BERNARD L. MADOFF

Sworn and subscribed before me this
21st day of March, 2016.


Notary Public

[TRUSTEE SIGNATURE PAGE TO SETTLEMENT AGREEMENT]

SONYA M. GRAHAM
Notary Public, State of New York
No. 01GR6133214
Qualified in Westchester County
Commission Expires: 9/12/20~~17~~

SILVER CREEK LONG/SHORT
HOLDINGS, L.L.C.



By: _____

[Signature]

Name: Eric E. Dillon

Title: Manager of Silver Creek Capital Management LLC,
its manager

Sworn and subscribed before me this
17th day of March, 2016.

[Signature]
Notary Public Karen R. Stanley

[SILVER CREEK LONG/SHORT HOLDINGS, L.L.C.
SIGNATURE PAGE TO SETTLEMENT AGREEMENT]

EXHIBIT “B”

PROPOSED ORDER

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

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

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

SIPA LIQUIDATION

(Substantively Consolidated)

**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 SILVER CREEK LONG/SHORT HOLDINGS, L.L.C.**

Upon the motion (the “Motion”)¹ of Irving H. Picard (the “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”)² and the substantively consolidated estate of Bernard L. Madoff (“Madoff,” and together with BLMIS, the “Debtors”), seeking entry of an order, pursuant to section 105(a) of the United States Bankruptcy Code and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, approving a certain settlement agreement, by and between the Trustee, on one the hand, and Silver Creek Long/Short Holdings, L.L.C. (“L/S Holdings”), 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

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

² Further citations to SIPA will omit “15 U.S.C.” and refer only to the relevant sections of SIPA.

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 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 appearing therefor; it is

ORDERED, that the Agreement between the Trustee, on the one hand, and L/S Holdings, on the other hand, is hereby approved and authorized; and it is further

ORDERED, that the Trustee and L/S Holdings 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
_____, 2016

HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT "C"

AFFIDAVIT OF IRVING H. PICARD

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

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

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

SIPA LIQUIDATION

(Substantively Consolidated)

**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 A SETTLEMENT AGREEMENT BY AND BETWEEN
THE TRUSTEE AND SILVER CREEK LONG/SHORT HOLDINGS, L.L.C.**

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 Chapter 7 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 between the Trustee on the one

hand, and Silver Creek Long/Short Holdings, L.L.C. ("L/S Holdings"), 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. I recognize that litigation against L/S Holdings would undoubtedly be complex, create additional delay, and would involve litigation risk.

5. This settlement, which provides for a \$9 million payment by L/S Holdings to the Fund of Customer Property, is a global settlement that resolves all issues pertaining to any and all claims the Trustee could have brought against L/S Holdings arising out of its investments with and redemptions from the Broad Market Fund and the Prime Fund without the need for further protracted, costly, and uncertain litigation.

6. The Agreement also furthers the interests of the customers of BLMIS with allowed claims by adding \$9 million to the Fund of Customer Property without allowing any additional claims against the bankruptcy estate.

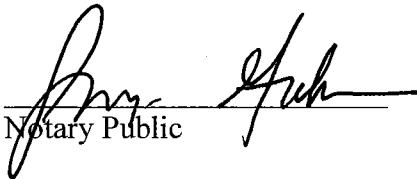
7. Given the potential impact of these issues, and the complexities involved in proceeding with litigation, I have determined, in my business judgment, that the Agreement represents a fair compromise of any and all claims that could have been brought against L/S Holdings.

8. In sum, I respectfully submit that the Agreement should be approved (a) to avoid potentially lengthy and burdensome litigation, and (b) because the Agreement represents a reasonable compromise of any and all claims that could have been brought against L/S Holdings.



IRVING H. PICARD

Sworn to before me this
25th day of March, 2016



Notary Public

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