

**BAKER & HOSTETLER LLP**

45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Kathryn M. Zunno  
Esterina Giuliani

**Hearing Date: November 30, 2016 at 10:00 a.m.**  
**Objection Deadline: November 23, 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,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

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

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

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

Plaintiff,

v.

COHMAD SECURITIES CORPORATION, *et al.*,

Defendants.

Adv. Pro. No. 09-01305 (SMB)

**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 COHMAD  
SECURITIES CORPORATION, MARCIA B. COHN, INDIVIDUALLY AND IN  
HER CAPACITY AS CO-EXECUTOR OF THE ESTATE OF MAURICE COHN, AND  
MARILYN COHN, INDIVIDUALLY AND IN HER CAPACITY AS  
CO-EXECUTOR OF THE ESTATE OF MAURICE COHN**

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-III (“SIPA”)<sup>1</sup> 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 § 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”)<sup>2</sup> by and between the Trustee, on the one hand, and, on the other hand, Cohmad Securities Corporation (“Cohmad”), Marcia B. Cohn, individually and in her capacity as co-executor of the Estate of Maurice Cohn, and Marilyn Cohn, individually and in her capacity as co-executor of the Estate of Maurice Cohn (collectively, the “Cohmad Defendants,” and together with the Trustee, the “Parties”).<sup>3</sup> In support of the Motion, the

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

<sup>2</sup> The form of the Agreement is attached hereto as Exhibit A.

<sup>3</sup> Maurice “Sonny” Cohn died in May 2015. Marcia B. Cohn and Marilyn Cohn in their capacities as co-executors of the Estate of Maurice Cohn were substituted as defendants to replace Sonny Cohn (ECF No. 372).

Trustee respectfully represents as follows:

**PRELIMINARY STATEMENT**

1. On June 22, 2009, the Trustee commenced an adversary proceeding against the Cohmad Defendants (and other defendants) to avoid and recover fraudulent transfers under various provisions of the Bankruptcy Code and the New York Debtor & Creditor Law (the “Adversary Proceeding”). The Trustee filed his First Amended Complaint on October 8, 2009, seeking to avoid and recover fraudulent transfers consisting of, among other things, (i) withdrawals the Cohmad Defendants made in connection with their BLMIS Investment Advisory (“IA”) accounts (the “IA Transfers”) and (ii) payments made directly or indirectly to the Cohmad Defendants from BLMIS and/or Madoff in connection with referring investors to BLMIS (the “Non-IA Transfers,” and with the IA Transfers, the “Avoidable Transfers”). *See* First Amended Complaint, *Picard v. Cohmad Securities Corp.*, Adv. Pro. No. 09-01305 (Bankr. S.D.N.Y. Filed October 8, 2009), ECF No. 82.

2. Besides the Cohmad Defendants, the Adversary Proceeding is currently pending against Milton S. Cohn,<sup>4</sup> Alvin J. Delaire, Jr., the Estate of Stanley Merwin Berman A/K/A Stanley M. Berman, Jonathan Greenberg, Morton Kurzrok, Linda Schoenheimer McCurdy, Richard Spring, Jane M. Delaire A/K/A Jane Delaire Hackett, Carole Delaire, Edward H Kohlschreiber, Edward H Kohlschreiber Sr Rev Mgt Trust, Joyce Berman, S & J Partnership, the Estate of Janet Jaffin, Milton Cooper in his capacity as Trustee of the Janet Jaffin Dispositive Trust and as co-executor of the Estate of Janet Jaffin, Matthew Greenberg, as co-executor of the Estate of Janet Jaffin, Lois Levine as co-Executor of the Estate of Janet Jaffin, the Spring Family

<sup>4</sup> Milton S. Cohn died in August 2015. Marcia B. Cohn and Sherry Gaines in their capacities as co-executors of the Estate of Milton S. Cohn were substituted as defendants to replace Milton S. Cohn (ECF No. 372).

Trust, the Jeanne T. Spring Trust, and Elizabeth M. Moody (the “Remaining Defendants”). The Trustee continues to pursue his claims against these defendants and the claims against these defendants are not being dismissed or released under the Agreement.

3. In the Adversary Proceeding, the Trustee alleged, among other things, that the Cohmad Defendants knew of fraud at BLMIS.

4. In connection with the IA Transfers to Maurice “Sonny” Cohn, Marcia Cohn, and Marilyn Cohn (collectively, the “Cohn Family Defendants”), the Trustee sought lifetime transfers aggregating Twenty-Seven Million Six Hundred Eighty Thousand Seven Hundred Sixty-Five United States Dollars (\$27,680,765).

5. In connection with the Non-IA Transfers to Sonny Cohn, the Trustee sought lifetime transfers aggregating approximately Thirty-Seven Million Six Hundred Sixty-Seven Thousand Twenty-Four United States Dollars (\$37,667,024).

6. In connection with the Non-IA Transfers to Marcia Cohn, the Trustee sought lifetime transfers aggregating approximately One Million Seven Hundred Eighty-Five Thousand Five Hundred Seventy United States Dollars (\$1,785,570).

7. In the Adversary Proceeding, the Trustee also alleged that Cohmad itself received initial transfers from BLMIS for referring investors into the Ponzi scheme totaling over Ninety-Eight Million United States Dollars (\$98,000,000), the vast majority of which was subsequently transferred to certain of Cohmad’s registered representatives, many of whom are still defendants in this action (the “Remaining Subsequent Transferee Defendants”).<sup>5</sup> As Cohmad is insolvent

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<sup>5</sup> The Cohmad registered representatives who are defendants in the Adversary Proceeding that received these subsequent transfers include: Marcia Cohn, Stanley M. Berman, Alvin J. Delaire, Jr., Jonathan Greenberg, Morton Kurzrok, Linda Schoenheimer McCurdy, and Richard Spring. The Remaining Subsequent Transferee Defendants include all of the foregoing except Marcia Cohn, who is a part of this settlement.

and non-operational, the Trustee will continue to pursue his claims to recover such transfers made to the Remaining Subsequent Transferee Defendants.

8. The Cohmad Defendants deny the factual and legal validity of the Trustee's claims and maintain that they had no knowledge or awareness of any fraud at BLMIS, Madoff's crimes or reason to believe that he was operating a Ponzi scheme.

9. Following extensive good faith negotiations, the Parties were able to reach a consensual resolution in the Adversary Proceeding. The Parties entered into the Agreement, which represents a complete settlement of all disputes as detailed in the Agreement between the Trustee and the Cohmad Defendants raised in the Adversary Proceeding, and the customer claim Marcia Cohn submitted in connection with her BLMIS IA Account No. 1C1295.

10. By the Agreement, the Trustee will recover Thirty-Two Million One Hundred Thousand United States Dollars (\$32,100,000) (the "Settlement Payment") collectively from the Cohn Family Defendants (including Sonny Cohn's estate), inclusive of interest. As part of the Agreement, Marcia Cohn is assigning her customer claim to the Trustee, which will be deemed allowed.

11. The Trustee's settlement with the Cohmad Defendants will obtain significant, direct monetary benefit for the estate and customers of BLMIS. The Trustee therefore respectfully requests that the Court approve this settlement.

## **BACKGROUND**

### ***The Commencement of the BLMIS Liquidation Proceeding***

12. On the Filing Date,<sup>6</sup> 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 the Debtors (Case No. 08 CV 10791). The complaint alleged that the Debtors engaged in fraud through investment advisor activities of BLMIS.

13. On December 15, 2008, pursuant to § 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 § 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.

14. 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, where it is pending as Case No. 08-01789 (SMB) (the “SIPA Proceeding”).

15. 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,

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<sup>6</sup> 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 § 78lll(7)(B) of SIPA.

Madoff pled guilty to an eleven-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.

16. 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 Transfers*

#### *The IA Transfers*

17. The Trustee alleged that the Cohn Family Defendants received avoidable transfers from BLMIS in connection with BLMIS IA Account Nos. 1C1069, 1C1311, 1C1228, 1C1342, 1C1296, and 1CM640 (the “BLMIS IA Accounts”) over the lifetime of these accounts in the aggregate amount of Twenty-Seven Million Six Hundred Eighty Thousand Seven Hundred Sixty-Five United States Dollars (\$27,680,765) (collectively, the “BLMIS IA Account Transfers”).

18. Cohmad also received avoidable transfers from BLMIS in connection with BLMIS IA Account No. 1C1067 in the aggregate amount of One Hundred Twenty-Five Thousand Four United States Dollars (\$125,004) more than six years prior to the Filing Date.

#### *The Non-IA Transfers*

19. The Trustee alleged that, between 1996 and 2008, Cohmad received initial transfers from BLMIS for referring investors to BLMIS totaling approximately Ninety-Eight Million Four Hundred Forty-Eight Thousand Six Hundred Seventy-Eight United States Dollars (\$98,448,678), the vast majority of which was subsequently transferred to the Remaining

Subsequent Transferee Defendants. As Cohmad is insolvent and non-operational, the Trustee will continue to pursue his claims to recover these transfers made to the Remaining Subsequent Transferee Defendants.

20. Further, in connection with referring investors to BLMIS: (i) Sonny Cohn received avoidable transfers from BLMIS in the aggregate amount of approximately Thirty-Seven Million Six Hundred Sixty-Seven Thousand Twenty-Four United States Dollars (\$37,667,024) from 1986 through 2008; and (ii) Marcia Cohn received avoidable transfers directly or indirectly from BLMIS (including indirectly from Cohmad) of approximately One Million Seven Hundred Eighty-Five Thousand Five Hundred Seventy United States Dollars (\$1,785,570) from 1993 through 2008.

21. The following chart details the Avoidable Transfers that the Trustee alleged the Cohn Family Defendants received:

**IA AND NON-IA TRANSFERS RECEIVED BY THE COHN FAMILY DEFENDANTS<sup>7</sup>**

<b><u>Transfers</u></b>	<b><u>Two-Year Period</u></b>	<b><u>Six-Year Period</u></b>	<b><u>Life to Date</u></b>
<b><i>IA Transfers</i></b>			
Fictitious Profits	\$ 2,966,110	\$11,958,743	\$26,457,829
Principal	\$ 0	\$ 366,347	\$ 1,222,936
<b>Total</b>	<b>\$ 2,966,110</b>	<b>\$12,325,090</b>	<b>\$27,680,765</b>
<b><i>Non-IA Transfers</i></b>			
Sonny Cohn	\$ 4,000,000	\$12,164,048	\$37,667,024
Marcia Cohn	\$ 321,835	\$ 1,178,150	\$ 1,785,570
<b>Total</b>	<b>\$ 4,321,835</b>	<b>\$13,342,198</b>	<b>\$39,452,594</b>
<b>Overall Total IA and Non IA Transfers</b>	<b>\$ 7,287,945</b>	<b>\$25,667,288</b>	<b>\$67,133,359</b>

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<sup>7</sup> This chart does not include the IA and Non-IA Transfers that the Trustee alleged Cohmad received (as further detailed in ¶¶ 18 and 19 herein) because, as explained in ¶ 19 *supra*, Cohmad is insolvent and non-operational, and the Trustee will continue to pursue the vast majority of these transfers from the Remaining Subsequent Transferee Defendants.



***Marcia Cohn's Customer Claim***

22. Marcia Cohn filed a customer claim, which was designated as Claim No. 002799 (the "Customer Claim") in connection with BLMIS IA Account No. 1C1295. The net equity of the Customer Claim is Sixty-Five Thousand Two Hundred Eight United States Dollars and Forty-Two Cents (\$65,208.42). In connection with the Agreement, the Customer Claim shall be deemed conclusively allowed pursuant to section 502 of the Bankruptcy Code and 15 U.S.C. § 7811(11), and Marcia Cohn is assigning the Customer Claim to the Trustee for the benefit of the estate.

**SETTLEMENT DISCUSSIONS AND THE TRUSTEE'S INVESTIGATION**

23. The Parties, through their counsel, engaged in extensive good faith discussions and negotiations aimed at resolving the Trustee's claims and the Customer Claim. The Trustee has conducted a comprehensive investigation of the Avoidable Transfers that the Cohmad Defendants received directly and indirectly from Madoff and/or BLMIS. As part of his investigation, the Trustee, among other things: (i) reviewed hundreds of thousands of BLMIS, Cohmad, and defendant-produced documents; (ii) reviewed and analyzed BLMIS-related transactional histories as reflected in the BLMIS account statements, correspondence and other records and documents available to the Trustee; and (iii) conducted a substantial review of third-party records and documents.

24. After reviewing the relevant records and documents, considering the relevant facts and complex legal issues, and thoroughly and deliberately considering the uncertainty and risks inherent in all litigation, the Trustee, in the exercise of his business judgment, has determined that it is appropriate to reach a consensual resolution for the Parties rather than to continue the litigation.

25. On November 3, 2016, the Trustee and the Cohmad Defendants executed the Agreement wherein they agreed to settle the matters at issue in the Adversary Proceeding on the terms summarized below. The Agreement resolves any and all disputes arising out of the Avoidable Transfers.

### **OVERVIEW OF THE AGREEMENT**

26. The principal terms and conditions of the Agreement are generally as follows:<sup>8</sup>

- The Estate of Maurice Cohn and Marilyn Cohn will pay or cause to be paid Thirty-Two Million One Hundred Thousand United States Dollars (\$32,100,000) to the Trustee, inclusive of interest, for the benefit of the fund of customer property within thirty (30) days of the Bankruptcy Court's approval of the Agreement by an order that is no longer subject to appeal, review, or rehearing;
- Marcia Cohn will assign to the Trustee the Customer Claim, which shall be deemed allowed;
- The Cohmad Defendants 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; and
- The Trustee will release, acquit, and forever discharge the Cohmad Defendants on the specific terms set forth in the Agreement.

### **RELIEF REQUESTED**

27. By this Motion, the Trustee respectfully requests that the Court enter an order

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<sup>8</sup> The Agreement is attached as Exhibit A and may be reviewed for a complete account of its terms.

substantially in the form of the proposed Order attached hereto as Exhibit B approving the Agreement.

### **LEGAL BASIS**

28. 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)).

29. 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 *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).

30. 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 Grp., Inc.*, 960 F.2d 285, 292 (2d Cir. 1992), *cert. dismissed*, 506 U.S. 1088 (1993)).

31. 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. Inc.*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). 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. 561, 594 (Bankr. S.D.N.Y. 2010). 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)).

32. The Agreement falls well above the lowest point in the range of reasonableness. The Agreement furthers the interest of BLMIS customers by recovering transfers of customer property from the Cohmad Defendants. In addition, the Agreement resolves all claims between the Parties (including the Customer Claim) and avoids the cost and delay of what could otherwise be lengthy and contentious litigation. *See* Affidavit of the Trustee in Support of the Motion (the “Picard Affidavit”). A true and accurate copy of the Picard Affidavit is attached as Exhibit C.

### **CONCLUSION**

33. 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 Thirty-Two Million One Hundred Thousand United States Dollars (\$32,100,000) to the fund of customer property and resolves all potential claims against the Cohmad Defendants relating to the Avoidable Transfers. 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**

34. 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) Vinson & Elkins LLP, attn: Clifford Thau and Marisa Antos-Fallon, 666 Fifth Avenue, 26th Floor, New York, New York 10103-0040; and (vi) Richards Kibbe & Orbe LLP, attn: Steven Paradise, 200 Liberty Street, New York, New York 10281. Notice of this Motion will also 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 the Adversary Proceeding pursuant to the Order Establishing Notice Procedures and Limiting Notice (ECF No. 4560). The Trustee submits that no other or further notice is required.

35. 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: November 4, 2016  
New York, New York

**BAKER & HOSTETLER LLP**

By: /s/ David J. Sheehan  
David J. Sheehan  
Email: [dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)  
Kathryn M. Zunno  
Email: [kzunno@bakerlaw.com](mailto:kzunno@bakerlaw.com)  
Esterina Giuliani  
Email: [egiuliani@bakerlaw.com](mailto:egiuliani@bakerlaw.com)

45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201

*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*

**BAKER & HOSTETLER LLP**

45 Rockefeller Plaza  
New York, New York 10111  
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Facsimile: (212) 589-4201  
David J. Sheehan  
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**Hearing Date: November 30, 2016 at 10:00 a.m.**

**Objection Deadline: November 23, 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,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

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

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

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

Plaintiff,

v.

COHMAD SECURITIES CORPORATION, *et al.*,

Defendants.

Adv. Pro. No. 09-01305 (SMB)

**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 COHMAD SECURITIES CORPORATION, MARCIA B. COHN, INDIVIDUALLY AND IN HER CAPACITY AS CO-EXECUTOR OF THE ESTATE OF MAURICE COHN, AND MARILYN COHN, INDIVIDUALLY AND IN HER CAPACITY AS CO-EXECUTOR OF THE ESTATE OF MAURICE COHN**

PLEASE TAKE NOTICE that Irving H. Picard (the “Trustee”), as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa-III, and the substantively consolidated Chapter 7 case pending before the United States Bankruptcy Court for the Southern District of New York of Bernard L. 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 **November 30, 2016 at 10:00 a.m.**, or as soon thereafter as counsel may be heard, seeking entry of an order, pursuant to § 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 Cohmad Securities Corporation, Marcia B. Cohn, individually and in her capacity as co-executor of the Estate of Maurice Cohn, and Marilyn Cohn, individually and in her capacity as co-executor of the Estate of Maurice Cohn, 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 November 23, 2016** (with a courtesy copy delivered to the Chambers of the Honorable Stuart M. Bernstein) and must be served upon Baker & Hostetler LLP, counsel for the Trustee, 45 Rockefeller Plaza, New York, New York 10111, attn:



Esterina Giuliani, Esq. and Kathryn M. Zunno, Esq. 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: November 4, 2016  
New York, New York

**BAKER & HOSTETLER LLP**

By: /s/ David J. Sheehan  
David J. Sheehan  
Email: [dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)  
Kathryn M. Zunno  
Email: [kzunno@bakerlaw.com](mailto:kzunno@bakerlaw.com)  
Esterina Giuliani  
Email: [egiuliani@bakerlaw.com](mailto:egiuliani@bakerlaw.com)

45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201

*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*

**EXHIBIT A**

**RELEASE AND SETTLEMENT AGREEMENT**

## **RELEASE AND SETTLEMENT AGREEMENT**

This Release and Settlement Agreement, dated as of November 3, 2016 (“Agreement”), is made by and between 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 (“SIPA”) and the substantively consolidated Chapter 7 case pending before the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) of Bernard L. Madoff (“Madoff”), on the one hand, and, on the other hand, Cohmad Securities Corporation (“Cohmad”), Marcia B. Cohn, individually and in her capacity as co-executor of the Estate of Maurice Cohn, and Marilyn Cohn, individually and in her capacity as co-executor of the Estate of Maurice Cohn (collectively, the “Cohmad Defendants”).<sup>1</sup> The Trustee and the Cohmad Defendants shall be referred to herein as the “Parties,” and each a “Party.”

### **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 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 Court 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. Pursuant to section 78fff-1(a) of SIPA, the Trustee has the general powers of a bankruptcy trustee in a case under Chapter 7 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), as well as the powers granted pursuant to SIPA. Chapters 1, 3, 5 and subchapters I and II of Chapter 7 of the Bankruptcy Code apply to this SIPA Proceeding to the extent consistent with SIPA.
- E. 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.

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<sup>1</sup> Maurice “Sonny” Cohn died in May 2015. Marcia B. Cohn and Marilyn Cohn in their capacities as co-executors of the Estate of Maurice Cohn were substituted as defendants to replace Sonny Cohn (ECF No. 372).

- F. The Trustee's claims against transferees who received voidable transfers from BLMIS arise under SIPA, including sections 78fff(b), 78fff-1(a) and 78fff-2(c)(3) of SIPA, sections 105(a), 541, 544, 547, 548, 550(a), and 551 of the Bankruptcy Code, the New York Fraudulent Conveyance Act (New York Debtor and Creditor Law § 270 *et seq.* (McKinney 2001)) and other applicable laws.
- G. On June 22, 2009, the Trustee commenced an adversary proceeding against the Cohmad Defendants (and other defendants) to recover fraudulent transfers under various provisions of the Bankruptcy Code and the New York Debtor & Creditor Law (the "Adversary Proceeding"). The Trustee filed his First Amended Complaint ("FAC") on October 8, 2009, seeking to avoid and recover fraudulent transfers consisting of, among other things, (i) withdrawals the Cohmad Defendants made in connection with their BLMIS Investment Advisory ("IA") accounts (the "IA Transfers") and (ii) payments made directly or indirectly to the Cohmad Defendants from BLMIS and/or Madoff in connection with referring investors to BLMIS (the "Non-IA Transfers," with the IA Transfers, the "Avoidable Transfers"). All claims asserted against the Cohmad Defendants by the Trustee in the Adversary Proceeding are collectively referred to as the "Trustee's Claims."
- H. Besides the Cohmad Defendants, the Adversary Proceeding is currently pending against Milton S. Cohn,<sup>2</sup> Alvin J. Delaire, Jr., the Estate of Stanley Merwin Berman A/K/A Stanley M. Berman, Jonathan Greenberg, Morton Kurzrok, Linda Schoenheimer McCurdy, Richard Spring, Jane M. Delaire A/K/A Jane Delaire Hackett, Carole Delaire, Edward H Kohlschreiber, Edward H Kohlschreiber Sr Rev Mgt Trust, Joyce Berman, S & J Partnership, the Estate of Janet Jaffin, Milton Cooper in his capacity as Trustee of the Janet Jaffin Dispositive Trust and as co-executor of the Estate of Janet Jaffin, Matthew Greenberg, as co-executor of the Estate of Janet Jaffin, Lois Levine as co-executor of the Estate of Janet Jaffin, the Spring Family Trust, the Jeanne T. Spring Trust, and Elizabeth M. Moody (the "Remaining Defendants"). The Trustee continues to pursue his claims against these defendants and the claims against these defendants are not being dismissed or released under this Agreement.
- I. In the Adversary Proceeding, the Trustee alleges that the Cohmad Defendants knew about fraud at BLMIS. The Trustee also alleges that Maurice "Sonny" Cohn and Madoff, his friend and former neighbor, founded Cohmad in February 1985. The Trustee further alleges that a significant amount of Cohmad's business was comprised of fees paid by BLMIS to Cohmad for referring investors to BLMIS.

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<sup>2</sup> Milton S. Cohn died in August 2015. Marcia B. Cohn and Sherry Gaines in their capacities as co-executors of the Estate of Milton S. Cohn were substituted as defendants to replace Milton S. Cohn (ECF No. 372).

- J. The Cohmad Defendants deny the factual and legal validity of the Trustee's claims and maintain that they had no knowledge or awareness of any fraud at BLMIS, Madoff's crimes or reason to believe that he was operating a Ponzi scheme.
- K. **The IA Transfers.** In the Adversary Proceeding, the Trustee alleges that Sonny Cohn, Marcia Cohn, and Marilyn Cohn (collectively, the "Cohn Family Defendants") received avoidable transfers from BLMIS in connection with BLMIS IA Account Nos. 1C1069, 1C1311, 1C1228, 1C1342, 1C1296, and 1CM640 (the "BLMIS IA Accounts") in the aggregate amount of Twenty-Seven Million Six Hundred Eighty Thousand Seven Hundred Sixty-Five United States Dollars (\$27,680,765) (collectively, the "BLMIS IA Account Transfers"). Of the BLMIS IA Account Transfers, the Cohn Family Defendants received Two Million Nine Hundred Sixty-Six Thousand One Hundred Ten United States Dollars (\$2,966,110) within two years prior to the Filing Date, and Twelve Million Three Hundred Twenty-Five Thousand and Ninety United States Dollars (\$12,325,090) within six years prior to the Filing Date.
- L. The Trustee also alleges that Cohmad received avoidable transfers from BLMIS more than six years prior to the Filing Date in connection with BLMIS IA Account No. 1C1067 in the aggregate amount of One Hundred Twenty-Five Thousand Four United States Dollars (\$125,004).
- M. **The Non-IA Transfers.** Between 1996 and 2008, Cohmad received initial transfers from BLMIS for referring investors to BLMIS totaling approximately Ninety-Eight Million Four Hundred Forty-Eight Thousand Six Hundred Seventy-Eight United States Dollars (\$98,448,678), the vast majority of which was subsequently transferred to certain of Cohmad's registered representatives, many of whom are still defendants in this action (the "Remaining Subsequent Transferee Defendants").<sup>3</sup> As Cohmad is insolvent and non-operational, the Trustee will continue to pursue his claims to recover such transfers made to the Remaining Subsequent Transferee Defendants.
- N. In connection with referring investors to BLMIS, the Trustee also alleges that: (i) Sonny Cohn received avoidable transfers from BLMIS in the aggregate amount of approximately Thirty-Seven Million Six Hundred Sixty-Seven Thousand Twenty-Four United States Dollars (\$37,667,024) from 1986 through 2008, and (ii) Marcia Cohn received avoidable transfers directly or indirectly from BLMIS (including indirectly from Cohmad) of approximately One Million Seven Hundred Eighty-Five Thousand Five Hundred Seventy United States Dollars (\$1,785,570) from 1993 through 2008 (subsections (i) and (ii) collectively, the "Referral Fee Transfers"). Of the Referral Fee Transfers, Sonny Cohn and Marcia Cohn received Four Million

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<sup>3</sup> The Cohmad registered representatives who are defendants in the Adversary Proceeding that received these subsequent transfers include: Marcia Cohn, Stanley M. Berman, Alvin J. Delaire, Jr., Jonathan Greenberg, Morton Kurzrok, Linda Schoenheimer McCurdy, and Richard Spring. The Remaining Subsequent Transferee Defendants include all of the foregoing except Marcia Cohn, who is a part of this settlement.

Three Hundred Twenty-One Thousand Eight Hundred Thirty-Five United States Dollars (\$4,321,835) within two years prior to the Filing Date, and Thirteen Million Three Hundred Forty-Two Thousand One Hundred Ninety-Eight United States Dollars (\$13,342,198) within six years prior to the Filing Date.

- O. **Marcia Cohn's Customer Claim.** Marcia Cohn filed a customer claim, which was designated as Claim No. 002799 (the "Customer Claim") in connection with BLMIS Account No. 1C1295, with a net equity of Sixty-Five Thousand Two Hundred Eight United States Dollars and Forty-Two Cents (\$65,208.42). Marcia Cohn is assigning her customer claim to the Trustee, which will be deemed allowed.

**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:

### **AGREEMENT**

1. **Payment to the Trustee.** Within thirty (30) days of 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 as set forth in paragraph 8 below, the Estate of Maurice Cohn and Marilyn Cohn shall pay or cause to be paid to the Trustee Thirty-Two Million One Hundred Thousand United States Dollars (\$32,100,000) (the "Settlement Payment") and Marcia Cohn will assign her Customer Claim to the Trustee (as detailed in paragraph 2 below) in full and final settlement and satisfaction solely of the Trustee's Claims that the Trustee or the BLMIS Estate has against the Cohmad Defendants, inclusive of interest, but specifically excluding the Trustee's claims against the Remaining Defendants (including the Remaining Subsequent Transferee Defendants). The Settlement Payment shall be made by: (i) wire transfer of immediately available funds to the Trustee's account (the Trustee will provide 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 the Trustee's obligations hereunder shall be conditioned on the collection of such funds by the Trustee.

2. **Allowance and Assignment of the Customer Claim.** 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 as set forth in paragraph 8 below, the Customer Claim shall be deemed conclusively allowed pursuant to section 502 of the Bankruptcy Code and 15 U.S.C. § 7811(11), equal in priority to other allowed customer claims against the BLMIS Estate, in the amount of Sixty-Five Thousand Two Hundred Eight United States Dollars and Forty-Two Cents (\$65,208.42) (the "Allowed Claim"), and Marcia Cohn unconditionally and irrevocably assigns, endorses and transfers to the Trustee the Allowed Claim.

3. **Cooperation.** The Cohmad Defendants agree to respond and produce documents responsive to all discovery requests from the Trustee in the Adversary Proceeding in accordance with the Federal Rules of Civil Procedure and all applicable rules for discovery on a party by a party, to make themselves available for depositions that will be held in Florida, and to make themselves available for trial with any reasonable travel expenses to be paid for by the Trustee. The Cohmad Defendants further agree to provide a declaration that all documents produced by

the Cohmad Defendants to the Trustee in this Adversary Proceeding are: (1) authentic under Federal Rule of Evidence 901; and (2) with the exception of emails that are purely personal, records of regularly conducted activity under Federal Rules of Evidence 803(6). Further, to the extent they are able to authenticate such documents after making a good faith effort, the Cohmad Defendants agree to provide a declaration that the following documents are authentic and records of regularly conducted activity under Federal Rules of Evidence 901 and 803(6), respectively: (1) documents Bates stamped CESTDB00000001—CESTDB01789994; and (2) the Cohmad Cash Database, as described in the Trustee's November 18, 2014 letter. The Trustee reserves the right to request that the Cohmad Defendants also provide a declaration that any documents referenced in this paragraph that are not records of regularly conducted activity qualify as other hearsay exceptions under applicable Federal Rules of Evidence.

4. 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, and in light of Cohmad's insolvency, and except with respect to the obligations, rights, and considerations arising under this Agreement, upon the Effective Date (defined below in paragraph 8), the Trustee on behalf of himself, BLMIS, and its consolidated estates, shall release, acquit, and forever discharge the Cohmad Defendants, and their successors and/or assigns (collectively, the "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, interest or disbursements), known or unknown (including the Unknown Claims defined below in paragraph 6), existing as of the Effective Date that are, have been, could have been, or might in the future be asserted by the Trustee on behalf of BLMIS, Madoff and/or the consolidated BLMIS/Madoff estate, against the Released Parties based on, arising out of, or in any way related to BLMIS, Madoff, the Avoidable Transfers and the Customer Claim. It is expressly agreed and understood by the Trustee and the Cohmad Defendants that the Released Parties do not include any defendant named in this Adversary Proceeding, other than the Cohmad Defendants, in the original complaint (ECF No. 1) or the FAC (ECF No. 82); or any defendant named in any other adversary proceeding brought by the Trustee in connection with the SIPA Proceeding. For the avoidance of doubt, it is expressly agreed that this release shall not and does not release any of the Trustee's claims against the Remaining Defendants (including the Remaining Subsequent Transferee Defendants), even though some of the transfers to the Remaining Subsequent Transferee Defendants were initially transferred from BLMIS to Cohmad, which claims the Trustee continues to pursue. It is also expressly agreed and understood by the Trustee and the Cohmad Defendants that, notwithstanding the foregoing release contained in this paragraph, the Released Parties are not released from liability for any transfers that they may receive after the date of this Agreement that constitute subsequent transfers of transfers made by BLMIS that are avoidable and recoverable under SIPA, including SIPA 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, and the New York Debtor and Creditor Law § 270 *et seq.* (McKinney 2001).

5. Release by the Cohmad 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 considerations arising under this Agreement, upon the Effective Date (defined below in paragraph 8), the Cohmad Defendants shall release, acquit, and forever discharge the Trustee and all his agents, representatives, attorneys, employees, and professionals, and BLMIS and its consolidated estate, including their successors and/or assigns, 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, interest, or disbursements), known or unknown (including the Unknown Claims defined below in paragraph 6), existing as of the Effective Date that are, have been, could have been, or might in the future be asserted by the Cohmad Defendants based on, arising out of, or in any way related to BLMIS, Madoff, the Avoidable Transfers, and the Customer Claim.

6. Unknown Claims. Unknown Claims shall mean any released claims pursuant to paragraphs 4 and 5 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 4 and 5 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 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS 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 and/or the Cohmad Defendants 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.

7. Dismissal of the Cohmad Defendants from the Adversary Proceeding. As soon as practicable after the Effective Date (defined in paragraph 8) which includes collection of the Settlement Payment, the Trustee will file a Notice of Dismissal dismissing the Cohmad Defendants from the Adversary Proceeding, with prejudice.

8. 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, collection of the Settlement Payment and the assignment of Marcia Cohn's Customer Claim to the Trustee ("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, concessions, consents, and agreements contained in the Agreement (other than this paragraph) shall be void; and (c) neither the Trustee nor the Cohmad 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 BLMIS, or Madoff.

9. The Cohmad Defendants' and the Trustee's Authority. The Cohmad 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 the Cohmad Defendants that, as of the date hereof, and subject to the approval of the Bankruptcy Court as set forth in paragraph 8 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.

10. Additional Representations and Warranties by the Cohmad Defendants. To induce the Trustee to enter into this Agreement, the Cohmad Defendants represent and warrant, to the best of each of their knowledge, information and belief, that: (1) other than the Avoidable Transfers as referenced in the Adversary Proceeding, the Released Parties have not received any material amount of money, funds, loans, transfers, or assets from Madoff, BLMIS or any other company or entity owned or controlled by Madoff or BLMIS; (2) the Released Parties are not immediate, mediate or subsequent transferees of any material funds or material property originating from Madoff or BLMIS to an initial transferee, other than the funds or property set forth in the FAC filed in the Adversary Proceeding; and (3) the Cohmad Defendants are not aware of any potential claims against the Released Parties by Madoff, BLMIS or any other company or entity owned or controlled by Madoff or BLMIS other than the claims in the FAC filed in the Adversary Proceeding.

11. 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.

12. 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.

13. 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. Specifically, but without limitation, the Cohmad Defendants expressly deny that they had any knowledge of the fraud at BLMIS or received any transfers asserted in the FAC with actual knowledge of, or with willful blindness to, facts suggesting fraud at BLMIS or otherwise in bad faith. This Agreement further 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. The Trustee and the Cohmad Defendants have chosen to settle this matter for the purposes of avoiding the uncertainty, time and expense in connection with further litigation.

14. 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.

15. 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 the Cohmad Defendants' ability to assign to the Trustee under this Agreement the Customer Claim pursuant to the Bankruptcy Court's November 10, 2010 Order Establishing Procedures for the Assignment of Allowed Claims.

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

17. No Third Party Beneficiary. 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.

18. 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.

19. 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 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 District Court or the Supreme Court of New York in New York County.

20. 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.

21. 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.

22. 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.

23. Confidentiality Agreement. The Parties agree that (i) all discussions and negotiations in furtherance of settlement shall be and shall remain confidential, and (ii) neither Party will disclose the substance of any such discussions or negotiations with any person or entity not a party to this Agreement or not a party to those discussions or negotiations (including any defendant in the Adversary Proceeding).

24. 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  
Email: ipicard@bakerlaw.com

with copies to:

Kathryn M. Zunno  
Email: kzunno@bakerlaw.com  
Esterina Giuliani  
Email: egiuliani@bakerlaw.com  
Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201

If to Cohmad Securities Corporation, Marcia B. Cohn, individually and in her capacity as co-executor of the Estate of Maurice Cohn, and Marilyn Cohn, individually and in her capacity as co-executor of the Estate of Maurice Cohn:

Steven Paradise  
Richards Kibbe & Orbe, LLP  
200 Liberty Street  
New York, New York 10281-1003  
Telephone: (212) 530-1800  
Facsimile: (212) 530-1801  
Email: sparadise@rkollp.com

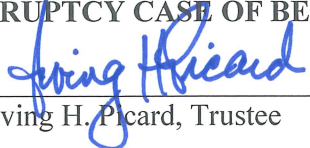
with copies to:

Clifford Thau  
Email: cthau@velaw.com  
Marisa Antos-Fallon  
Email: mantosfallon@velaw.com  
Vinson & Elkins LLP  
666 Fifth Avenue, 26th Floor  
New York, New York 10103  
Telephone: (212) 237-0016  
Facsimile: (917) 849-533

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

**TRUSTEE**

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

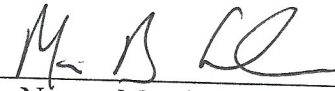
By:   
Irving H. Picard, Trustee

Sworn to and subscribed before me  
this 7<sup>th</sup> day of November,  
2016

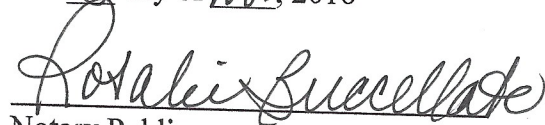
  
Notary Public

**Gracemary Curbelo  
Notary Public, State of New York  
No. 01CU6288700, Qualified in Westchester County  
Certificate filed in New York County  
Commission Expires 9/9/17**

**COHMAD SECURITIES  
CORPORATION**


By :   
Name: Marcia B. Cohn  
Title: President

Subscribed before me  
this 3 day of NOV, 2016


  
Notary Public

**ROSALIE BUCCELLATO**  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01BU6067387  
QUALIFIED IN NASSAU COUNTY  
MY COMMISSION EXPIRES DEC. 10, 2017

**MARCIA B. COHN  
INDIVIDUALLY AND IN HER  
CAPACITY AS CO-EXECUTOR OF  
THE ESTATE OF MAURICE  
COHN**

By :   
Marcia B. Cohn

Subscribed before me  
this 3 day of NOV 2016

  
Notary Public

**ROSALIE BUCCELLATO  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01BU6067387  
QUALIFIED IN NASSAU COUNTY  
MY COMMISSION EXPIRES DEC. 10, 2017**

**MARILYN COHN INDIVIDUALLY  
AND IN HER CAPACITY AS CO-  
EXECUTOR OF THE ESTATE OF  
MAURICE COHN**

By: Marilyn Cohn  
Marilyn Cohn

Subscribed before me  
this 3 day of NW, 2016

Rosalie Buccellato  
Notary Public

**ROSALIE BUCCELLATO**  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01BU6067387  
QUALIFIED IN NASSAU COUNTY  
MY COMMISSION EXPIRES DEC. 10, 2017



**EXHIBIT B**

**PROPOSED ORDER**

**BAKER & HOSTETLER LLP**

45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Kathryn M. Zunno  
Esterina Giuliani

*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,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

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

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

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

Plaintiff,

v.

COHMAD SECURITIES CORPORATION, *et al.*,

Defendants.

Adv. Pro. No. 09-01305 (SMB)

**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 COHMAD SECURITIES CORPORATION, MARCIA B. COHN, INDIVIDUALLY AND IN HER CAPACITY AS CO-EXECUTOR OF THE ESTATE OF MAURICE COHN, AND MARILYN COHN, INDIVIDUALLY AND IN HER CAPACITY AS CO-EXECUTOR OF THE ESTATE OF MAURICE COHN**

Upon the motion (the “Motion”)<sup>1</sup> 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-III (“SIPA”)<sup>2</sup> and the substantively consolidated Chapter 7 case pending before the United States Bankruptcy Court for the Southern District of New York of Bernard L. Madoff (“Madoff,” and together with BLMIS, the “Debtors”), seeking entry of an order, pursuant to § 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 Cohmad Securities Corporation, Marcia B. Cohn, individually and in her capacity as co-executor of the Estate of Maurice Cohn, and Marilyn Cohn, individually and in her capacity as co-executor of the Estate of Maurice Cohn (collectively, the “Cohmad 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 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

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

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

ORDERED, that the Trustee and the Cohmad 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: \_\_\_\_\_, 2016  
New York, New York

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HONORABLE STUART M. BERNSTEIN  
UNITED STATES BANKRUPTCY JUDGE

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

**EXHIBIT C**

**AFFIDAVIT OF IRVING H. PICARD**

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

<p>SECURITIES INVESTOR PROTECTION CORPORATION,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>BERNARD L. MADOFF INVESTMENT SECURITIES LLC,</p> <p style="text-align: center;">Defendant.</p>	<p>Adv. Pro. No. 08-01789 (SMB)</p> <p>SIPA Liquidation</p> <p>(Substantively Consolidated)</p>
<p>In re:</p> <p>BERNARD L. MADOFF,</p> <p style="text-align: center;">Debtor.</p>	
<p>IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>COHMAD SECURITIES CORPORATION, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Adv. Pro. No. 09-01305 (SMB)</p>

**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 COHMAD SECURITIES CORPORATION, MARCIA B. COHN, INDIVIDUALLY AND IN HER CAPACITY AS CO-EXECUTOR OF THE ESTATE OF MAURICE COHN, AND MARILYN COHN, INDIVIDUALLY AND IN HER CAPACITY AS CO-EXECUTOR OF THE ESTATE OF MAURICE COHN**

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 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 case pending before the United States Bankruptcy Court for the Southern District Court of New York of Bernard L. Madoff (“Madoff,” and together with BLMIS, 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 Cohmad Securities Corporation, Marcia B. Cohn, individually and in her capacity as co-executor of the Estate of Maurice Cohn, and Marilyn Cohn, individually and in her capacity as co-executor of the Estate of Maurice Cohn (collectively, the “Cohmad 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 claims the Trustee has against the Cohmad Defendants with respect to the Avoidable Transfers (but specifically excludes the Trustee’s claims against the Remaining Defendants). The Trustee continues to pursue his claims against the Remaining Defendants,

which includes claims to recover substantial portions of the approximate \$98,000,000 (Ninety Eight Million United States Dollars) in fees for referring investors that BLMIS paid to Cohmad (which is insolvent and non-functional) that were then subsequently transferred to the Remaining Subsequent Transferee Defendants.

5. In addition, the Agreement resolves Marcia Cohn's customer claim ("Customer Claim") in the amount of \$65,208.42 (Sixty-Five Thousand Two Hundred Eight United States Dollars and Forty-Two Cents), which the Trustee has designated as Claim No. 002799 in connection with BLMIS Account No. 1C1295, by providing that such claim shall be deemed allowed and assigned to the Trustee.

6. I recognize that absent the Agreement, lengthy, burdensome, and expensive litigation regarding the claims and defenses in this matter would likely result. I also recognize that litigating the claims against the Cohmad Defendants would be complex and involve litigation risk.

7. At my direction, my counsel and consultants have conducted a comprehensive investigation of the claims against the Cohmad Defendants in this Adversary Proceeding and the fraudulent transfers at issue consisting of, among other things, (i) withdrawals the Cohmad Defendants made in connection with their BLMIS Investment Advisory ("IA") accounts (the "IA Transfers") and (ii) payments made directly or indirectly to the Cohmad Defendants from BLMIS and/or Madoff in connection with referring investors to BLMIS (the "Non-IA Transfers"). My counsel has advised me that the investigation included, among other things: (i) reviewing hundreds of thousands of BLMIS, Cohmad, and defendant-produced documents; (ii) reviewing and analyzing BLMIS-related transactional histories as reflected in the BLMIS account statements, correspondence and other records and documents available to the Trustee; and (iii) conducting a substantial review of third-party records and documents.



8. Based on the information that my counsel has provided to me, I have determined, among other things, that Maurice "Sonny" Cohn, Marcia Cohn, and Marilyn Cohn received avoidable transfers (including both IA Transfers and Non-IA Transfers) in the aggregate amount of approximately \$67,133,359 (Sixty-Seven Million One Hundred Thirty-Three Thousand Three Hundred Fifty-Nine United States Dollars), of which they received \$25,667,288 (Twenty-Five Million Six Hundred Sixty-Seven Thousand Two Hundred Eighty-Eight United States Dollars) within the six-year period prior to the Filing Date.

9. The Agreement furthers the interests of the customers of BLMIS by: (i) recovering \$32,100,000 (Thirty-Two Million One Hundred Thousand United States Dollars), which represents more than 100% (one-hundred percent) of the alleged fraudulent IA Transfers and Non-IA Transfers that Sonny Cohn, Marcia Cohn, and Marilyn Cohn received within the six-year period prior to the Filing Date; and (ii) resolving Marcia Cohn's Customer Claim.

10. After thoroughly considering the information provided to me by my counsel, the relevant facts (including that Cohmad is insolvent and non-operational), complex legal issues, and the uncertainty and risks inherent in all litigation, I, in the exercise of my business judgment, have determined that the Agreement represents a fair compromise of any and all disputes between the Parties arising out of the Adversary Proceeding that is in the best interest of the estate.



IRVING H. PICARD

Sworn to before me this 4<sup>th</sup>  
day of November, 2016



Notary Public

**Gracemary Curbelo**  
Notary Public, State of New York  
No. 01CU6288700, Qualified in Westchester County  
Certificate filed in New York County 4  
Commission Expires 9/9/17