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Hearing Date: October 3, 2017 at 10 a.m.
Objection Deadline: September 26, 2017 at 5 p.m.

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

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

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.

MILES Q. FITERMAN REVOCABLE TRUST;
MILES Q. FITERMAN NON-EXEMPT
MARITAL TRUST; TOWERS
MANAGEMENT COMPANY LLC;
FITERMAN GST EXEMPT MARITAL
TRUST; MILES FITERMAN FAMILY
TRUST; SHIRLEY FITERMAN, individually,
and in her capacity as Trustee for the MILES Q.
FITERMAN REVOCABLE TRUST and the
MILES Q. FITERMAN NON-EXEMPT
MARITAL TRUST; STEVEN FITERMAN,
individually, and in his capacity as Trustee for
the MILES Q. FITERMAN REVOCABLE

Adv. Pro. No. 10-04337 (SMB)

TRUST and the MILES Q. FITERMAN
NONEXEMPT MARITAL TRUST; VALERIE
HERSCHMAN, individually, and in her capacity
as Trustee for the MILES Q. FITERMAN
REVOCABLE TRUST and the MILES Q.
FITERMAN NON-EXEMPT MARITAL
TRUST; KAREN WASSERMAN; LYNN
GUEZ; STEPHANIE ROSENTHAL; MILES Q.
FITERMAN II; AND MATTHEW FITERMAN,

Defendants.

**MOTION FOR ENTRY OF AN 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 THE DEFENDANTS**

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

Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the chapter 7 estate of Bernard L. Madoff (“Madoff,” and together with BLMIS, collectively, the “Debtors”), by and through his undersigned counsel, submits this motion (the “Motion”) seeking entry of an order, pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving a settlement, the terms and conditions of which are set forth in the settlement agreement (the “Agreement”)¹ by and among the Trustee on the one hand, and the Transferees, as defined in the Agreement (the “Defendants”), on the other hand, and in support thereof, the Trustee respectfully represents as follows:

¹ The form of Agreement is attached hereto as Exhibit A. Capitalized terms used but not defined herein have the meaning ascribed to such terms in the Agreement.

PRELIMINARY STATEMENT

The Trustee's settlement with the Defendants provides for payment to the Trustee of \$37,300,000.00 (the "Settlement Payment"), or 97.24% of the two-year transfers in this good faith case. The Settlement Payment adds substantially to the funds available for distribution to customers who lost money as a result of Madoff's Ponzi scheme.

The Trustee's Complaint in this action seeks (i) the avoidance and recovery of \$38,356,992.00 in two-year initial transfers from BLMIS account No. 1F0200 (the "BLMIS Account") made to Defendant Miles Q. Fiterman Non-Exempt Marital Trust (the "Marital Trust"), (ii) the recovery of subsequent transfers to certain other Defendants, and (iii) the disallowance of certain customer claims filed with the Trustee with respect to certain related BLMIS accounts.

This Settlement represents a good faith, complete, and total settlement between the Trustee and the Defendants as to any and all disputes between them raised in this Adversary Proceeding and as to any and all claims filed with the Trustee by the Defendants.

This Settlement will benefit the customers of BLMIS with allowed claims, and the Trustee respectfully requests that the Court approve it.

BACKGROUND

1. On December 11, 2008 (the "Filing Date"), Madoff was arrested by federal agents for criminal violations of federal securities laws, including securities fraud, investment adviser fraud, and mail and wire fraud. Contemporaneously, the SEC commenced a proceeding in the District Court as *Securities Exchange Commission v. Bernard L. Madoff Investment Securities LLC et al.*, No. 08 CV 10791, which was pending in the District Court and subsequently closed on March 17, 2015. The SEC's complaint

alleges that Madoff and BLMIS engaged in fraud through the investment adviser activities of BLMIS.

2. On December 12, 2008, the Honorable Louis L. Stanton of the District Court entered an order that appointed Lee S. Richards as receiver for the assets of BLMIS.

3. On December 15, 2008, under SIPA § 78eee(a)(4)(A), the SEC consented to combining its action with an application by SIPC. Thereafter, under SIPA § 78eee(a)(4)(B), SIPC filed an application in the District Court alleging, among other things, that BLMIS could not meet its obligations to securities customers as they came due and its customers needed the protections afforded by SIPA.

4. Also on December 15, 2008, the District Court entered an order pursuant to SIPA (the “Protective Decree”), to which BLMIS consented, that, 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; and
- (ii) removed the case to this Court pursuant to section 78eee(b)(4) of SIPA.

5. By orders dated December 23, 2008 and February 4, 2009, respectively, this Court approved the Trustee’s bond and found that the Trustee was a disinterested person. On April 13, 2009, an involuntary bankruptcy petition was filed against Madoff, and on June 9, 2009, this Court substantively consolidated Madoff’s chapter 7 estate into the SIPA Proceeding.

6. At a plea hearing on March 12, 2009 (the “Plea Hearing”), in the case captioned *United States v. Madoff*, Case No. 09-CR-213(DC), Madoff pled guilty to an eleven-count criminal information filed against him by the United States Attorney for the Southern District of New York. 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), and asserted “[a]s I engaged in my fraud, I knew what I was doing [was] wrong, indeed criminal.” (Id. at 23: 20-21). On June 29, 2009, Madoff was sentenced to 150 years in prison.

THE CLAIMS AGAINST THE DEFENDANTS

7. The Trustee commenced this Adversary Proceeding by filing a complaint on November 30, 2010, as subsequently amended on December 10, 2010 (the “Complaint”), against (i) Miles Q. Fiterman Revocable Trust, the Marital Trust, Towers Management Company LLC, Fiterman GST Exempt Marital Trust, and Miles Fiterman Family Trust, (ii) Shirley Fiterman, Steven Fiterman, and Valerie Herschman, in each case individually and in his or her capacity as Trustee for the Miles Q. Fiterman Revocable Trust and the Marital Trust, and (iii) Karen Wasserman, Lynn Guez, Stephanie Rosenthal, Miles Q. Fiterman II, and Matthew Fiterman.

8. Subsequent to the Trustee’s filing of the Complaint, Brian M. O’Connell, Esq., of the law firm Ciklin Lubitz & O’Connell, replaced Shirley Fiterman, Steven Fiterman, and Valerie Herschman as trustee for the Marital Trust, thereafter becoming the sole trustee for same.

9. The Complaint asserts claims seeking (i) the avoidance and recovery of initial transfers, (ii) the recovery of subsequent transfers related thereto, and (iii) the disallowance of BLMIS customer claims related to and/or filed by certain Defendants, as described in more detail below. The Trustee’s claims against the Defendants include, but are not limited to, claims under Sections 502(d), 548, 550 and 551 of the Bankruptcy Code and SIPA § 78fff-2(c)(3) for initial and subsequent transfers within the applicable statutory period (collectively, the “Avoiding Power Claims”).

10. As to avoidance and recovery, the Trustee has alleged in his Complaint that the Marital Trust (and its then-existing trustees, in their capacity as trustees) received \$38,356,992 of two-year avoidable initial transfers in connection with the BLMIS Account, which was in its name (the “Avoidable Transfers”), which amounts were subsequently transferred in whole or in part to other Defendants.

11. The Complaint also alleges that Defendants Miles Q. Fiterman Revocable Trust (and its trustees, in their capacity as trustees), Towers Management Company LLC, and Shirley Fiterman received six-year initial transfers in connection with two separate BLMIS accounts, which amounts were subsequently transferred in whole or in part to certain Defendants. The Trustee’s allegations as to these transfers were dismissed by virtue of the Supreme Court Decision regarding Bankruptcy Code section 546(e).

THE CLAIMS FILED AGAINST THE BLMIS ESTATE

12. Prior to July 2, 2009, the bar date for filing claims:
- a. Defendant Marital Trust filed Claim No. 002973 (the “Net Winner Claim”) in connection with the BLMIS Account;
 - b. Defendant Shirley Fiterman filed Claim No. 003156 (the “1F0198 Claim”) in connection with BLMIS Account No. 1F0198;
 - c. Defendant Steven Fiterman, as Manager of non-defendant third-party Fairway II LLC, an entity whose members include Defendants Steven Fiterman, Valerie Herschman, Karen Wasserman and Lynn Guez, filed Claim No. 003077 (the “1F0190 Claim”) in connection with BLMIS Account No. 1F0190, an account in the name Fairway Partnership II; and
 - d. Non-defendant MSM Investment Group LLC filed Claim No. 003162 (the “MSM Claim”) in connection with BLMIS Account No. 1M0246.
13. The Complaint seeks the disallowance of the 1F0198 Claim, the 1F0198 Claim, and the MSM Claim² and confirms that the Net Winner Claim was denied by

² The MSM Claim was allowed by the Trustee in October 2014 as a result of separate negotiations.

Trustee pursuant to a Notice of Trustee's Determination of Claim dated October 26, 2010, to which no objection was filed.

14. Based on this Court's decision upholding the Trustee's calculation of Net Equity on a Cash In-Cash Out basis (and the Second Circuit Court of Appeals' affirmance, and United States Supreme Court's denial of *certiorari*, as to same),³ the Trustee has calculated the amount of the 1F0198 Claim to be \$1,505,000.00 and the amount of the 1F0190 Claim to be \$272,000.00.

RELEVANT LITIGATION AND NEGOTIATIONS

15. On April 17, 2014, the Defendants filed a Motion to Dismiss the First Amended Complaint on the basis that, *inter alia*, the Marital Trust was a "financial participant" that is deemed to have provided value for the Avoidable Transfers under Bankruptcy Code section 548(d)(2)(b) based on the balances on its BLMIS account statements (the "548(d) Issue"). The Trustee disputes the validity of this defense.

16. Beginning in mid-2016, the Parties began to engage in discussions regarding the possible resolution of the Adversary Proceeding. The Parties thereafter participated in multiple in-person and telephonic meetings and discussions, ultimately reaching a settlement and executing the Agreement on August 28, 2017.

17. After a thorough and deliberate consideration of the circumstances unique to this proceeding, as well as the uncertainty and risks inherent in all litigation, the Trustee, in the exercise of his business judgment, has determined that it is appropriate to resolve this matter rather than proceed with litigation.

³ *In re Bernard L. Madoff Inv. Sec. LLC*, 654 F.3d 229 (2d Cir. 2011), *reh'g and reh'g en banc den.* (2d Cir. Nov. 08, 2011), *cert. dismissed*, 132 S. Ct. 2712 (2012), *cert. denied*, 133 S. Ct. 24 (2012), 133 S. Ct. 25 (2012).

OVERVIEW OF THE AGREEMENT

18. The principal terms and conditions of the Agreement are generally as follows:⁴

- The terms and conditions of the Agreement shall become effective and enforceable on the first business day after the date that the Bankruptcy Court order approving the Agreement becomes a final order, as defined in the Agreement (the “Effective Date”).
- Following the Effective Date, Defendants shall pay the Settlement Payment to Trustee in the following amounts and at the following times:
 - \$10,000,000 no later than 30 days after the Effective Date (the “Initial Payment”);
 - \$12,000,000 no later than 15 months after the Effective Date; and
 - \$15,300,000 no later than 18 months after the Effective Date.
- The obligation to pay the Settlement Payment is supported by a Stipulation for Entry of Judgment for the full amount of the Avoidable Transfers (less any payments previously received, plus interest), executed contemporaneously with the Agreement, which the Trustee may submit to the Court for entry if a payment default is uncured for 15 business days after written notice to the Defendants.
- The Trustee’s determination as to the Net Winner Claim shall continue and be deemed final and not in dispute.
- As soon as practicable after the Settlement Payment has been received in full by the Trustee, the 1F0198 Claim and 1F0190 Claim shall be determined, settled, compromised, and allowed in the total amounts of \$1,505,000 and \$272,000, respectively.
- The Trustee will release, remise, and forever discharge the Defendants and two related entities—Fairway II LLC and Fairway Partnership LLC—on the specific terms set forth in the Agreement.
- The Defendants will release, remise, and forever discharge the Trustee and all his agents and BLMIS and its consolidated estate on the specific terms set forth in the Agreement.

⁴ In the event of any inconsistency between the summary of terms provided in this section and the terms of the Agreement, the Agreement shall prevail.

- As soon as practicable after receipt of the Initial Payment, the Trustee shall file a Notice of Dismissal dismissing this Adversary Proceeding, without prejudice to the Trustee's right to re-open the case in the event of an uncured default and without costs to either the Trustee or the Defendants.

RELIEF REQUESTED

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

LEGAL BASIS

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

21. The Second Circuit has stated that in determining whether to approve a compromise, the court 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.’” *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir.), *cert. denied*, *Cosoff v. Rodman*, 464 U.S. 822 (1983) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir.), *cert. denied*, 409 U.S. 1039 (1972)); *see also In re Chemtura Corp.*, 439 B.R. 561, 594 (Bankr. S.D.N.Y. 2010). “[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).

22. The factors that courts in the Second Circuit consider when approving bankruptcy settlements are well established. These interrelated factors are:

(1) the balance between the litigation’s possibility of success and the settlement’s future benefits; (2) the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, including the difficulty in collecting on the judgment; (3) the paramount interests of the creditors, including each affected class’s relative benefits and the degree to which creditors either do not object to or affirmatively support the proposed settlement; (4) whether other parties in interest support the settlement; (5) the competency and experience of counsel supporting, and [t]he experience and knowledge of the bankruptcy court judge reviewing, the settlement; (6) the nature and breadth of releases to be obtained by officers and directors; and (7) the extent to which the settlement is the product of arm’s length bargaining.

Fox v. Picard (In re Madoff), 848 F.Supp.2d. 469, 487-488 (S.D.N.Y. 2012), *aff’d*, 740 F.3d 81 (2d. Cir. 2014) (quoting *Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 462 (2d Cir. 2007) (internal quotation marks and citations omitted)).

23. 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 v. Shugrue*, 165 B.R. 115, 122 (Bankr. S.D.N.Y. 1994). Finally, the Court should be mindful of the principle that “the law favors compromise.” *Vaughn v. Drexel Burnham Lambert Group, Inc. (In re Drexel Burnham*

Lambert Group, Inc.), 134 B.R. 499, 505 (quoting *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976)).

24. The Trustee's settlement with the Defendants is fair and equitable and in the best interests of the estate and the customers of BLMIS. See 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. The following considerations influenced the Trustee's decision to settle:

a) Benefit to BLMIS Customers. The Agreement greatly furthers the interests of the customers of BLMIS by adding \$37,300,000 in cash to the fund of BLMIS customer property. Such amount represents over 97% of the two-year transfer amount sought in the Trustee's complaint.

b) Defendants' Motion to Dismiss. As noted, the Defendants previously filed a motion to dismiss which contained various defenses, including the 548(d) Issue. Although he believes that the 548(d) Issue is not a valid defense, the Trustee cannot be certain that he would prevail in litigation. The Agreement eliminates the uncertainty of litigating those claims.

c) Avoidance of the Cost and Delay of Further Litigation. The Agreement eliminates the expense and delay of litigation, which would likely require costly discovery and motion practice, and potentially a trial. The Agreement also eliminates the inevitable delay caused by any future appeals in this proceeding, based on the issues raised in the Defendants' motion to dismiss or otherwise, which benefits the estate and the customers of BLMIS. Even if successful in whole or in part, litigation with the Defendants would delay distributions for years.

d) Difficulties with Collection. In light of the substantial amount of the Trustee's claims against Defendants and that Defendants consist of numerous separate individuals and trusts, if the Trustee were to prevail through litigation, there could be significant difficulties and delays associated with judgment enforcement efforts. By entering into the Agreement at this time, such uncertainties have been eliminated.

e) Finality. The Agreement resolves all claims among the Parties as to the Adversary Proceeding.

f) Experienced Counsel. The Parties are represented by sophisticated and experienced professionals. The Parties and their professionals understand the difficulties of a SIPA liquidation of this size and complexity and are aware of the harm to customers and creditors if the Agreement is not consummated.

g) Product of Arms-Length Negotiations. The settlement is the product of arm's length and good faith negotiations between the Trustee and the Defendants.

25. For all of these reasons, the Agreement is well within the "range of reasonableness," *In re W.T. Grant Co.*, 699 F.2d at 608 (quoting *Newman v. Stein*, 464 F.2d at 693), and confers a substantial benefit on the estate and the customers of BLMIS. The Trustee respectfully requests that the Court approve the Agreement.

CONCLUSION

26. In sum, the Trustee submits that the Agreement should be approved: (a) because it represents a fair and reasonable compromise of the Avoiding Power Claims that greatly benefits the estate and the customers of BLMIS and (b) to avoid lengthy, burdensome, and expensive litigation as well as litigation and collection risks. Because the Agreement is well within the "range of reasonableness" and confers a substantial benefit on the estate, the Trustee respectfully requests that the Court enter an Order approving the

Agreement.

NOTICE

27. In accordance with Bankruptcy Rules 2002 and 9019 and that certain Order Establishing Notice Procedures and Limiting Notice entered on December 5, 2011 (BLMIS Main Proceeding, Adv. Pro. No. 08-1789, Dkt. No. 4560) (the “Order Limiting Notice”), notice of this Motion is being 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) counsel for all Defendants and anyone else who has filed notices of appearance in this Adversary Proceeding. Also in accordance with the Order Limiting Notice, the Trustee has provided notice by e-mail to interested parties in the SIPA liquidation proceeding of the following: the Motion; the date and time scheduled for the hearing at which this Court will consider the Motion; the date by which objections, if any, must be filed with this Court, and the name and address of the persons to be served with a copy of any objections. The Trustee submits that no other or further notice is required.

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

Dated: New York, New York
August 29, 2017

By: /s/ Howard L. Simon
Howard L. Simon (hsimon@windelsmarx.com)
Kim M. Longo (klongo@windelsmarx.com)
John J. Tepedino (jtepedino@windelsmarx.com)
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*Special Counsel for Irving H. Picard, Trustee
for the Substantively Consolidated SIPA
Liquidation of Bernard L. Madoff Investment
Securities LLC and Bernard L. Madoff*

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Hearing Date: October 3, 2017 at 10 a.m.
Objection Deadline: September 26, 2017 at 5 p.m.

**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)

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

Plaintiff,

v.

MILES Q. FITERMAN REVOCABLE TRUST;
MILES Q. FITERMAN NON-EXEMPT
MARITAL TRUST; TOWERS
MANAGEMENT COMPANY LLC;
FITERMAN GST EXEMPT MARITAL
TRUST; MILES FITERMAN FAMILY
TRUST; SHIRLEY FITERMAN, individually,
and in her capacity as Trustee for the MILES Q.
FITERMAN REVOCABLE TRUST and the
MILES Q. FITERMAN NON-EXEMPT
MARITAL TRUST; STEVEN FITERMAN,
individually, and in his capacity as Trustee for

Adv. Pro. No. 10-04337 (SMB)

the MILES Q. FITERMAN REVOCABLE TRUST and the MILES Q. FITERMAN NONEXEMPT MARITAL TRUST; VALERIE HERSCHMAN, individually, and in her capacity as Trustee for the MILES Q. FITERMAN REVOCABLE TRUST and the MILES Q. FITERMAN NON-EXEMPT MARITAL TRUST; KAREN WASSERMAN; LYNN GUEZ; STEPHANIE ROSENTHAL; MILES Q. FITERMAN II; AND MATTHEW FITERMAN,

Defendants.

NOTICE OF MOTION FOR ENTRY OF AN 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 THE DEFENDANTS

PLEASE TAKE NOTICE that Irving H. Picard (the “Trustee”), as 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”), by and through his undersigned counsel, will move before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge, at the United States Bankruptcy Court, the Alexander Hamilton Customs House, One Bowling Green, Courtroom 723, New York, New York 10004, on **October 3, 2017 at 10 a.m.**, or as soon thereafter as counsel can be heard, for 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 (the “Bankruptcy Rules”), approving a settlement agreement (the “Agreement”) by and among the Trustee and the Defendants as more particularly set forth in the motion annexed hereto (the “Motion”).¹

PLEASE TAKE FURTHER NOTICE that responses or objections to the Motion, if any, must be in writing, shall conform to the Bankruptcy Rules and other applicable rules and

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

orders of this Court, and shall be filed in accordance with General Order M-399 and the electronic filing procedures for the United States Bankruptcy Court for the Southern District of New York (available at www.nysb.uscourts.gov), with a courtesy copy delivered to the Chambers of the Honorable Stuart M. Bernstein, and shall be served upon (a) Windels Marx Lane & Mittendorf, LLP, 156 West 56th Street, New York, NY 10019, Attn: Howard L. Simon, Esq.; (b) Irving H. Picard, Esq., c/o Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, NY 10111; (c) Robins Kaplan LLP, 800 LaSalle Avenue, Suite 2800, Minneapolis, MN 55402, Attn: Thomas F. Berndt, Esq.; and (d) Jones & Schwartz P.C., One Old Country Road, Suite 384, Carle Place, NY 11514, Attn: Harold D. Jones, Esq., so as to be received no later than **September 26, 2017 at 5:00 p.m.** Any objections must specifically state 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 if no responses or objections are timely filed and served with respect to the Motion, the Motion shall be deemed uncontested and an order granting the requested relief may be entered with no further notice or opportunity to be heard offered to any party.

Dated: New York, New York
August 29, 2017

By: /s/ Howard L. Simon
Howard L. Simon (hsimon@windelsmarx.com)
Kim M. Longo (klongo@windelsmarx.com)
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*Special Counsel for Irving H. Picard, Trustee for
the Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and
Bernard L. Madoff*

EXECUTION COPY

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (this "Agreement") is made and entered into as of August ²⁸, 2017, by and between Irving H. Picard, in his capacity as the trustee ("Trustee") for the liquidation proceedings under the Securities Investor Protection Act, 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"), on the one hand, and Miles Q. Fitterman Revocable Trust, Miles Q. Fitterman Non-Exempt Marital Trust, Towers Management Company LLC, Fitterman GST Exempt Marital Trust, and Miles Fitterman Family Trust (collectively, the "Entity Defendants"), and Shirley Fitterman, individually, and in her capacity as Trustee for the Miles Q. Fitterman Revocable Trust, Steven Fitterman, individually, and in his capacity as Trustee for the Miles Q. Fitterman Revocable Trust, Valerie Herschman, individually, and in her capacity as Trustee for the Miles Q. Fitterman Revocable Trust, Karen Wasserman, Lynn Guez, Stephanie Fitterman (*f/k/a* Stephanie Rosenthal), Miles Q. Fitterman II, and Matthew Fitterman (collectively, the "Individual Defendants"), and together with the Entity Defendants, "Transferees"), on the other hand. Trustee and Transferees shall be hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, BLMIS and its predecessor were registered broker-dealers with the United States Securities and Exchange Commission (the "Commission") and members of the Securities Investor Protection Corporation ("SIPC");

WHEREAS, on December 11, 2008 (the "Filing Date"), the Commission filed a complaint in the United States District Court for the Southern District of New York (the "District");

Court”) against BLMIS and Madoff. On December 12, 2008, the District Court entered an order which, among other things, appointed Lee S. Richards, Esq. as receiver (the “Receiver”) for the assets of BLMIS (No. 08-CV-10791(LSS));

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

WHEREAS, pursuant to section 78fff-1(a) of SIPA, 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;

WHEREAS, under SIPA, 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;

WHEREAS, 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, 548, 550(a) and 551 of the Bankruptcy Code and other applicable laws;

WHEREAS, pursuant to an order of the Bankruptcy Court, dated December 23, 2008 (the "Claims Procedures Order", Case No. 08-01789 (SMB),¹ ECF No. 12), Trustee is authorized to enter into settlements with claimants in connection with any claims upon which there is a disagreement, provided that Trustee obtains the approval of SIPC. Pursuant to the Claims Procedures Order, no further order of the Bankruptcy Court is necessary as long as any obligations incurred by the BLMIS estate under the settlements are ascertainable from the books and records of BLMIS or are otherwise established to the satisfaction of Trustee;

WHEREAS, on November 30, 2010, Trustee commenced an adversary proceeding in the Bankruptcy Court in an action captioned *Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC v. Miles Q. Fiterman Revocable Trust; Miles Q. Fiterman Non-Exempt Marital Trust; Towers Management Company LLC; Fiterman GST Exempt Marital Trust; Miles Fiterman Family Trust; Shirley Fiterman, individually, and in her capacity as Trustee for the Miles Q. Fiterman Revocable Trust and the Miles Q. Fiterman Non-Exempt Marital Trust; Steven Fiterman, individually, and in his capacity as Trustee for the Miles Q. Fiterman Revocable Trust and the Miles Q. Fiterman Nonexempt Marital Trust; Valerie Herschman, individually, and in her capacity as Trustee for the Miles Q. Fiterman Revocable Trust and the Miles Q. Fiterman Non-Exempt Marital Trust; Karen Wasserman; Lynn Guez; Stephanie Rosenthal; Miles Q. Fiterman II; and Matthew Fiterman*, Adv. Pro. No. 10-04337 (SMB) (the "Adversary Proceeding");

¹ All ECF numbers referenced herein are applicable to Case No. 08-01789 (SMB), unless otherwise stated.

WHEREAS, subsequent to the filing of the Complaint, Brian M. O’Connell, Esq., of the firm Ciklin Lubitz & O’Connell, replaced Shirley Fiterman, Steven Fiterman, and Valerie Herschman as trustee for the Miles Q. Fiterman Non-Exempt Marital Trust, thereafter becoming the sole trustee for same;

WHEREAS, on June 22, 2015, the Supreme Court of the United States denied certiorari of Trustee’s appeal of *SIPC v. Ida Fishman Revocable Trust*, 14-1128 and *Picard v. Ida Fishman Revocable Trust*, 14-1129 (the “Supreme Court Decision”), and thus Section 546(e) of the Bankruptcy Code applies to this Adversary Proceeding;

WHEREAS, pursuant to the complaint filed in the Adversary Proceeding, as amended on December 10, 2010 (the “Complaint”), Trustee alleges that Transferees received avoidable transfers in the aggregate amount of Thirty Eight Million Three Hundred Fifty Six Thousand Nine Hundred Ninety Two United States Dollars (\$38,356,992.00) in connection with BLMIS account No. 1F0200 (the “BLMIS Account”) within the two years prior to the Filing Date (the “Avoidable Transfers”);

WHEREAS, Entity Defendant Miles Q. Fiterman Non-Exempt Marital Trust filed Claim No. 002973 in connection with the BLMIS Account, which was denied by Trustee pursuant to the Notice of Trustee’s Determination of Claim dated October 26, 2010 (the “Determination Notice”);

WHEREAS, no Transferee has filed an objection to the Determination Notice;

WHEREAS, Individual Defendant Shirley Fiterman filed Claim No. 003156 (the “1F0198 Claim”) in connection with BLMIS Account No. 1F0198, which claim has not been previously determined by Trustee;

WHEREAS, Trustee has determined that between the opening of BLMIS Account No. 1F0198 and the Filing Date, on an overall basis, One Million Five Hundred Five Thousand

United States Dollars (\$1,505,000.00) more in principal was deposited or transferred into BLMIS Account No. 1F0198 than was withdrawn during the life of the account;

WHEREAS, Individual Defendant Steven Fiterman, as Manager of non-defendant third-party Fairway II LLC, an entity whose members include Individual Defendants Steven Fiterman, Valerie Herschman, Karen Wasserman and Lynn Guez, filed Claim No. 003077 (the “1F0190 Claim”) in connection with BLMIS Account No. 1F0190 (together with BLMIS Account No. 1F0198, the “Related Accounts”), an account in the name Fairway Partnership II, which claim has not been previously determined by Trustee;

WHEREAS, Trustee has determined that between the opening of BLMIS Account No. 1F0190 and the Filing Date, on an overall basis, Two Hundred Seventy Two Thousand United States Dollars (\$272,000.00) more in principal was deposited or transferred into BLMIS Account No. 1F0190 than was withdrawn during the life of the account;

WHEREAS, the Complaint expresses Trustee’s desire to disallow the 1F0198 Claim and the 1F0190 Claim pursuant to Bankruptcy Code section 502(d) in the context of the claims allowance process;

WHEREAS, the Complaint also expresses Trustee’s desire to disallow non-defendant MSM Investment Group LLC Claim No. 003162 in connection with BLMIS Account No. 1M0246, but such claim was allowed by the Trustee in October 2014 as a result of separate negotiations;

WHEREAS, the Parties desire to settle any and all claims and disputes the Parties may have against each other with respect to the Adversary Proceeding, the BLMIS Account, the Related Accounts and the Avoidable Transfers without the expense, delay and uncertainty of litigation.

DEFINITION

The following definition shall apply to and constitute part of this Agreement and all schedules, exhibits and annexes hereto:

“Unknown Claims” shall mean any Released Claims (as defined in Section 4 herein), that Transferees 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, Transferees 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.

Transferees 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. Transferees 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 Transferees shall expressly have and shall 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 or such different or additional facts. Transferees 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.

NOW THEREFORE, for the good and valuable consideration set forth herein, the adequacy and sufficiency of which is recognized for all purposes, the Parties agree as follows:

1. Determinations. For purposes of this settlement and in consideration for the covenants and agreements set forth in this Agreement and for other good and valuable consideration (including, without limitation, the release set forth in Section 3), the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following determinations:

(a) As soon as practicable after the Settlement Payment (as defined in Section 2 herein) has been received in full by Trustee, the 1F0198 Claim shall be determined, settled, compromised and allowed in the total amount of One Million Five Hundred Five Thousand United States Dollars (\$1,505,000.00) (the “1F0198 Allowed Claim”) pursuant to a Notice of Trustee’s Determination of Claim, in the form attached hereto as Exhibit B. Shirley Fiterman hereby waives the thirty (30) day objection period in connection with such determination, and such determination shall be deemed final as of the date of Trustee’s receipt of the Settlement Payment.

(b) As soon as practicable after the Settlement Payment has been received in full by Trustee, the 1F0190 Claim shall be determined, settled, compromised and allowed in the total amount of Two Hundred Seventy Two Thousand United States Dollars (\$272,000.00) (the “1F0190 Allowed Claim”) pursuant to a Notice of Trustee’s Determination of Claim, in the form attached hereto as Exhibit C. Steven Fiterman, on behalf of Fairway II LLC, hereby waives the thirty (30) day objection period in connection with such determination, and such determination shall be deemed final as of the date of Trustee’s receipt of the Settlement Payment.

(c) The Determination Notice, as relates to Claim No. 002973, shall continue in full force and effect and shall be deemed final and not subject to dispute.

2. Settlement Payment Obligation; Stipulated Judgment in the Event of Default.

(a) In consideration for the covenants and agreements set forth in this Agreement and for other good and valuable consideration (including, without limitation, the release set forth in Section 3), the receipt and sufficiency of which are hereby acknowledged for purposes of this settlement only, the Miles Q. Fiterman Non-Exempt Marital Trust shall pay or cause to be paid to Trustee the aggregate amount of Thirty Seven Million Three Hundred Thousand United States Dollars (\$37,300,000.00) (the "Settlement Payment"), over a period of eighteen (18) months, as follows:

- (1) a total of Ten Million United States Dollars (\$10,000,000.00) not later than thirty (30) days after the Effective Date (as defined herein) of this Agreement (the "Initial Payment");
- (2) a total of Twelve Million United States Dollars (\$12,000,000.00) not later than fifteen (15) months after the Effective Date of this Agreement; and
- (3) a total of Fifteen Million Three Hundred Thousand United States Dollars (\$15,300,000.00) not later than eighteen (18) months after the Effective Date of this Agreement.

(b) Notwithstanding the foregoing, the Miles Q. Fiterman Non-Exempt Marital Trust may prepay any or all of the Settlement Payment at any time without penalty.

(c) All payments shall be by wire transfer of immediately available funds to the account specified on Schedule 1 attached hereto, provided that satisfaction of Trustee's obligations hereunder shall be conditioned on the collection of such funds by Trustee. Upon request, Trustee's counsel will confirm receipt of payments by email.

(d) As security for the Miles Q. Fiterman Non-Exempt Marital Trust's obligation to pay the Settlement Payment, Shirley Fiterman ("Guarantor") hereby irrevocably, absolutely and unconditionally guarantees to Trustee the full, prompt and unconditional payment when due of

the Settlement Payment (the "Guarantee"). If any installment of the Settlement Payment is not paid when due and remains unpaid after fifteen (15) business days of written notice of default to Transferees, Guarantor will immediately pay that amount to Trustee by wire transfer of immediately available funds to the account specified on Schedule 1 attached hereto, without set-off, counterclaim, or deduction of any kind, provided that notwithstanding anything contained in this Agreement or Guarantee to the contrary, Guarantor's maximum liability under this Guarantee shall not exceed the amount of the Settlement Payment. Trustee will not be required to make any demand, commence any action, or exhaust any remedy against Transferees or any other party before seeking payment under this Guarantee in the event of an uncured default in payment of the Settlement Payment by the Miles Q. Fiterman Non-Exempt Marital Trust. This Guarantee will continue until the Settlement Payment has been paid in full.

(e) The obligation to pay the Settlement Payment shall be evidenced by a Stipulation for Entry of Judgment in the amount of Thirty Eight Million Three Hundred Fifty Six Thousand Nine Hundred Ninety Two United States Dollars (\$38,356,992.00) (the "Full Demand Amount") in the form attached hereto as Exhibit A, which will be executed by Miles Q. Fiterman Non-Exempt Marital Trust and Shirley Fiterman contemporaneously with the execution of this Agreement. Counsel for Trustee will hold the Stipulation for Entry of Judgment in escrow and will not file the Stipulation for Entry of Judgment and request entry of the judgment unless there is a default in the payment of any installment of the Settlement Payment which is not cured within fifteen (15) business days of written notice of default to Transferees and their counsel at the addresses listed on the signature pages hereto. In such event, the full remaining unpaid amount of the Settlement Payment shall be due and payable, and judgment shall be entered against Miles Q. Fiterman Non-Exempt Marital Trust and Shirley Fiterman upon written application by Trustee regarding the uncured default in payment of the Settlement Payment, for

the Full Demand Amount less any payments previously made against the Settlement Payment. If judgment is entered it shall bear interest at the applicable rate per annum from the Effective Date.

3. Release by Trustee.

(a) In consideration for the covenants and agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, except with respect to any rights arising under this Agreement, Trustee hereby releases, remises and forever discharges Transferees, Fairway II LLC and Fairway Partnership LLC 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, that are, have been, could have been, or might in the future be, asserted by Trustee on behalf of BLMIS, Madoff, and/or the consolidated BLMIS/Madoff estate, against Transferees, Fairway II LLC or Fairway Partnership LLC based on, arising out of, or relating in any way to the Avoidable Transfers, the BLMIS Account, the Related Accounts or BLMIS account Nos. 1F0021 and 1T0015, the claims concerning which were dismissed pursuant to the Supreme Court Decision.

(b) Notwithstanding the foregoing release contained in Section 3(a), (i) Transferees are not released from liability for any transfers they may have received in connection with any account not specified herein or may receive after the date of this Agreement which constitute

subsequent transfers of transfers made by BLMIS which are avoidable and recoverable under SIPA and the Bankruptcy Code, the New York Debtor and Creditor Law § 270 *et seq.* (McKinney 2001), and other applicable laws, and (ii) Steven Fiterman is not released from liability for any claims or causes of action asserted in the pending adversary proceeding captioned *Picard v. Fiterman Investment Fund, et al.*, Adv. Pro. No. 10-04354 (SMB) (the “Fiterman Investment Matter”).

4. Release by Transferees.

(a) Each Transferee, on behalf of itself and its executors, administrators, heirs and assigns, hereby releases, remises, and forever discharges: (a) Trustee, (b) all of Trustee’s attorneys, professionals, agents and consultants, and (c) BLMIS and its consolidated estate from any and all 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 (including Unknown Claims), now existing or arising in the future, arising out of or in any way related to BLMIS, the Madoff Estate, the Avoidable Transfers, the BLMIS Account, the Related Accounts or BLMIS account Nos. 1F0021 and 1T0015, the claims concerning which were dismissed pursuant to the Supreme Court Decision (the “Released Claims”).

(b) Notwithstanding the foregoing release in Section 4(a), Individual Defendant Steven Fiterman does not release Trustee from any claims or causes of action, or waive any of his defenses, related to the Fiterman Investment Matter, in which Steven Fiterman is a defendant.

5. Approval of the Agreement; Dismissal of the Adversary Proceeding.

(a) This Agreement is subject to approval by the Bankruptcy Court. If the Bankruptcy Court does not approve this Agreement, this Agreement shall be null and void, unless otherwise agreed in writing by the Parties.

(b) The terms and conditions of this Agreement shall become effective and enforceable on the first business day after the date that the Bankruptcy Court order approving this Agreement (the “Order”) becomes a final order, meaning that the Order has not been reversed, stayed, modified or amended, and the time to appeal or seek certiorari with respect to the Order has expired (the “Effective Date”).

(c) As soon as practicable after his receipt of the Initial Payment, Trustee will file a Notice of Dismissal dismissing the Adversary Proceeding without prejudice and without costs to either Trustee or Transferees, subject to the right to re-open the Adversary Proceeding in the event of an uncured default in the Settlement Payment to seek entry of Judgment pursuant to the Stipulation for Entry of Judgment.

6. General Representations and Warranties.

(a) Trustee hereby represents and warrants to Transferees that: (i) subject to the approval of the Bankruptcy Court as set forth in Section 5, he has the full power, authority and legal right to execute and deliver this Agreement and to perform his obligations hereunder; (ii) this Agreement has been duly executed and delivered by the Trustee and constitutes the valid and binding agreement of the Trustee, enforceable against the Trustee in accordance with its terms; (iii) in executing this Agreement, the Trustee has done so with the full knowledge of any and all rights that the Trustee may have with respect to the controversies herein compromised, and the Trustee has received or has had the opportunity to obtain independent legal advice from his or her attorneys with regard to the facts relating to said controversies and with respect to the

rights arising out of said facts; and (iv) no other person or entity, other than those specifically identified herein, has any interest in the matters that such the Trustee releases herein, and the Trustee has not assigned or transferred or purported to assign or transfer to any such third person or party all or any portion of the matters that the Trustee releases herein.

(b) Each Individual Defendant represents and warrants to Trustee that: (i) such Individual Defendant has the full power, authority, legal right and capacity to execute and deliver this Agreement and to perform his or her obligations hereunder; (ii) this Agreement has been duly executed and delivered by such Individual Defendant and constitutes the valid and binding agreement of such Individual Defendant, enforceable against such Individual Defendant in accordance with its terms; (iii) in executing this Agreement, such Individual Defendant has done so with the full knowledge of any and all rights that such Individual Defendant may have with respect to the controversies herein compromised, and such Individual Defendant has received or has had the opportunity to obtain independent legal advice from his or her attorneys with regard to the facts relating to said controversies and with respect to the rights arising out of said facts; and (iv) no other person or entity, other than those specifically identified herein, has any interest in the matters that such Individual Defendant releases herein, and such Individual Defendant has not assigned or transferred or purported to assign or transfer to any such third person or party all or any portion of the matters that such Individual Defendant releases herein.

(c) Each Entity Defendant represents and warrants to Trustee that: (i) such Entity Defendant has the full power, authority and legal right to execute and deliver this Agreement and to perform its obligations hereunder; (ii) the execution and delivery of this Agreement and the performance by such Entity Defendant of its obligations hereunder has been duly and validly authorized by all necessary action on the part of such Entity Defendant; (iii) this Agreement has been duly executed and delivered by such Entity Defendant and constitutes the valid and binding

agreement of such Entity Defendant, enforceable against such Entity Defendant in accordance with its terms; (iv) in executing this Agreement, such Entity Defendant has done so with the full knowledge of any and all rights that such Entity Defendant may have with respect to the controversies herein compromised, and such Entity Defendant has received or has had the opportunity to obtain independent legal advice from its attorneys with regard to the facts relating to said controversies and with respect to the rights arising out of said facts; and (v) no other person or entity, other than those specifically identified herein, has any interest in the matters that such Entity Defendant releases herein, and such Entity Defendant has not assigned or transferred or purported to assign or transfer to any such third person or party all or any portion of the matters that such Entity Defendant releases herein.

7. Additional Representations and Warranties by Transferees. To induce Trustee to enter into this Agreement, Transferees represent and warrant, to the best of their knowledge, information and belief, that, other than as referenced on Exhibit B of the Complaint, as referenced on Exhibit B of the amended complaint filed in the Fiterman Investment Matter, or as concerns the Related Accounts, BLMIS account Nos. 1F0021, 1T0015, 1M0246, 1F0020, 1F0077, 1G0077, 1F0086, 1H0125, 1N0019, 1G0307, 1G0293, 1H0036, 1W0101, 1G0292, 1G0105, 1F0142, 1F0143, 1G0316, 1F0144, 1F0145, 1F0153, 1F0019, 1H0124, 1H0028, 1G0096, 1F0023, 1F0078, 1F0147, or any predecessors to any of the foregoing accounts, the BLMIS Account or the BLMIS accounts at issue in the Fiterman Investment Matter: (1) Transferees have not received any money, funds, loans, transfers, assets, financial assistance, or financial accommodation from Madoff, BLMIS, or any other company or entity owned or controlled by Madoff or BLMIS; (2) Transferees are not immediate, mediate, or subsequent transferees of any funds or property originating from Madoff or BLMIS that was transferred to an initial transferee of BLMIS; and (3) Transferees are not aware of any potential claims against

Transferees by Madoff, BLMIS or any other company or entity owned or controlled by Madoff or BLMIS.

8. Termination of Agreements with BLMIS. Any and all prior agreements between Transferees and BLMIS are hereby terminated as of the date of this Agreement.

9. Further Assurances. Each Party shall execute and deliver any document or instrument reasonably requested by the other Parties after the date of this Agreement to effectuate the intent of this Agreement.

10. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties pertaining to the subject matter hereof and supersedes any and all prior or contemporaneous agreements, representations and understandings of the Parties concerning the subject matter hereof.

11. Amendment; Waiver. This Agreement may not be terminated, amended or modified in any way except by 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.

12. Assignment. This Agreement may not be assigned by any Party without the prior written consent of the other Parties.

13. Successors. This Agreement shall be binding upon, inure to the benefit of and be enforceable against the Parties and their respective estates, heirs, personal representatives, executors, successors and permitted assigns.

14. 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.

15. 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.

16. 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. Each Party may evidence its execution of this Agreement by delivery to the other Parties of scanned or faxed copies of its signature, with the same effect as the delivery of an original signature.

17. Governing Law. This Agreement and any claim related directly or indirectly to this Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to the principles of conflicts of law thereof), the Bankruptcy Code and SIPA. Each Party hereby waives on behalf of itself and its successors and assigns any and all right to argue that the choice of New York law provision is or has become unreasonable in any legal proceeding.

18. JURISDICTION; WAIVER OF JURY TRIAL.

(a) 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. 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 MAY BE BROUGHT IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR THE SUPREME COURT OF THE STATE OF NEW YORK IN NEW YORK COUNTY.

(b) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

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

20. Notices. All notices, requests, demands, consents and communications necessary or required under this Agreement shall be in writing and shall be delivered by hand or sent by registered or certified mail, return receipt requested, by overnight mail with confirmation, by facsimile (receipt confirmed) or by electronic means (receipt confirmed), in each case addressed and copied as set forth on the applicable signature page hereto. A Party may change its address for receiving notice by giving notice of a new address in the manner provided herein. All such notices, requests, demands, consents and other communications shall be deemed to have been duly given or sent two (2) days following the date on which mailed, or on the date on which delivered by courier or by hand or by facsimile or electronic transmission (receipt confirmed), as the case may be, and addressed as aforesaid.

21. No Third Party Beneficiaries. Except as expressly provided in Section 3 or Section 4, 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.

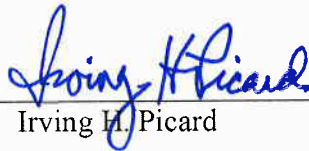
22. Captions and Rules of Construction. The captions in this Agreement are inserted only as a matter of convenience and for reference and do not define, limit or describe the scope of this Agreement or the scope or content of any of its provisions. Any reference in this Agreement to a section is to a section of this Agreement. "Including" is not intended to be a limiting term.

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

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**

Address:
Irving H. Picard
c/o Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Facsimile: (212) 589-4201


Irving H. Picard

With copies to:
Windels Marx Lane & Mittendorf, LLP
156 West 56th Street
New York, New York 10019
Attention: Howard L. Simon
Facsimile No.: (212) 262-1251

Sworn and subscribed before me this
24th day August, 2017.


Notary Public

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

TRANSFeree

MILES Q. FITERMAN NON-EXEMPT MARITAL TRUST

Address:

MILES Q. FITERMAN NON-EXEMPT
MARITAL TRUST

c/o Brian M. O'Connell, Esq.

Ciklin Lubitz & O'Connell

515 North Flagler Drive 20th Floor

West Palm Beach, FL 33401

By: 

Name: Brian M. O'Connell

Title: Trustee

With copies to:

Robins Kaplan LLP

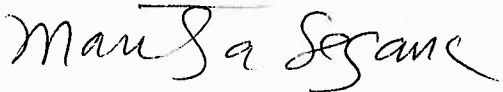
800 LaSalle Avenue

Suite 2800

Minneapolis, MN 55402

Attention: Thomas F. Berndt

Sworn and subscribed before me this
21 day of August, 2017.



Notary Public

MARITZA SEGARRA
Notary Public, State of New York
No. 03-4652865
Qualified in Westchester County
Commission Expires December 31, 2017

[TRANSFeree SIGNATURE PAGE TO SETTLEMENT AGREEMENT]

TRANSFeree

MILES Q. FITERMAN REVOCABLE TRUST

Address:

MILES Q. FITERMAN REVOCABLE
TRUST

By:

Name: Valerie Herschman

Title: TRUSTEE

11414 Pinkoleander Lane
Palm Beach Gardens, FL 33418

With copies to:

Robins Kaplan LLP

800 LaSalle Avenue

Suite 2800

Minneapolis, MN 55402

Attention: Thomas F. Berndt

Sworn and subscribed before me this
25 day of August, 2017.


Notary Public



Philip Aneq
Notary Public
State of Florida
My Commission Expires 8/25/2020
Commission No. GG 24833

[TRANSFEREE SIGNATURE PAGE TO SETTLEMENT AGREEMENT]

TRANSFeree

TOWERS MANAGEMENT COMPANY LLC

Address:
TOWERS MANAGEMENT
COMPANY LLC
c/o Brian M. O'Connell, Esq.
Ciklin Lubitz & O'Connell
515 North Flagler Drive 20th Floor
West Palm Beach, FL 33401

By: _____
Name: _____
Title: _____

With copies to:
Robins Kaplan LLP
800 LaSalle Avenue
Suite 2800
Minneapolis, MN 55402
Attention: Thomas F. Berndt

Sworn and subscribed before me this
25th day of August, 2017.

Sharon R. Lobdell

Notary Public

[TRANSFeree SIGNATURE PAGE TO SETTLEMENT AGREEMENT]



TRANSFeree

FITERMAN GST EXEMPT MARITAL TRUST

Address:
FITERMAN GST EXEMPT MARITAL
TRUST
c/o Brian M. O'Connell, Esq.
Ciklin Lubitz & O'Connell
515 North Flagler Drive 20th Floor
West Palm Beach, FL 33401

By: Valerie Herschman
Name: VALERIE HERSCHMAN
Title: TRUSTEE

With copies to:
Robins Kaplan LLP
800 LaSalle Avenue
Suite 2800
Minneapolis, MN 55402
Attention: Thomas F. Berndt

Sworn and subscribed before me this
25 day of August, 2017.


Notary Public



Philip Aneq
Notary Public
State of Florida
My Commission Expires 8/25/2020
Commission No. GG 24833

[TRANSFeree SIGNATURE PAGE TO SETTLEMENT AGREEMENT]

TRANSFeree

MILES FITERMAN FAMILY TRUST

Address:
MILES FITERMAN FAMILY TRUST

11414 Pink Oleander Lane
Palm Beach Gardens, FL
33418

By: Valerie Hershman
Name: Valerie Hershman
Title: TRUSTEE

With copies to:
Robins Kaplan LLP
800 LaSalle Avenue
Suite 2800
Minneapolis, MN 55402
Attention: Thomas F. Berndt

Sworn and subscribed before me this
05 day of August, 2017.

[Signature]
Notary Public




Philip Aneq
Notary Public
State of Florida
My Commission Expires 8/25/2020
Commission No. GG 24833

[TRANSFeree SIGNATURE PAGE TO SETTLEMENT AGREEMENT]

TRANSFeree

**SHIRLEY FITERMAN, individually, and in her
capacity as Trustee for the MILES Q. FITERMAN
REVOCABLE TRUST**

Address:
Shirley Fiterman
c/o Brian M. O'Connell, Esq.
Ciklin Lubitz & O'Connell
515 North Flagler Drive 20th Floor
West Palm Beach, FL 33401

By: 
Name: Brian M. O'Connell
Title: Guardian

With copies to:
Robins Kaplan LLP
800 LaSalle Avenue
Suite 2800
Minneapolis, MN 55402
Attention: Thomas F. Berndt

Sworn and subscribed before me this
21 day of August, 2017.


Notary Public

[TRANSFeree SIGNATURE PAGE TO SETTLEMENT AGREEMENT]

MARITZA SEGARRA
Notary Public, State of New York
No. 03-4652865
Qualified in Westchester County
Commission Expires December 31, 2017

TRANSFeree

**STEVEN FITERMAN, individually, and in his
capacity as Trustee for the MILES Q. FITERMAN
REVOCABLE TRUST**

Address:
Steven Fiterman

6967 Verde Way
Naples, FL 34108


Steven Fiterman

With copies to:
Robins Kaplan LLP
800 LaSalle Avenue
Suite 2800
Minneapolis, MN 55402
Attention: Thomas F. Berndt

Sworn and subscribed before me this
25th day of August, 2017.

Anne Marie Storms

Notary Public



[TRANSFeree SIGNATURE PAGE TO SETTLEMENT AGREEMENT]

TRANSFeree

**VALERIE HERSCHMAN, individually, and in her
capacity as Trustee for the MILES Q. FITERMAN
REVOCABLE TRUST**

Address:
Valerie Herschman

Valerie Herschman
Valerie Herschman

11417 Pink Oleander Lane
Worm Beach Gardens, FL 33418

With copies to:
Robins Kaplan LLP
800 LaSalle Avenue
Suite 2800
Minneapolis, MN 55402
Attention: Thomas F. Berndt

Sworn and subscribed before me this
25 day of August, 2017.

[Signature]
Notary Public




**Philip Aneq
Notary Public
State of Florida
My Commission Expires 8/25/2020
Commission No. GG 24833**

[TRANSFeree SIGNATURE PAGE TO SETTLEMENT AGREEMENT]

TRANSFeree

Address:

Karen Wasserman

65 Ventana Cerr D.
Las Vegas, NV
89113
Karen Wasserman

With copies to:

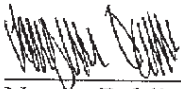
Robins Kaplan LLP

800 LaSalle Avenue

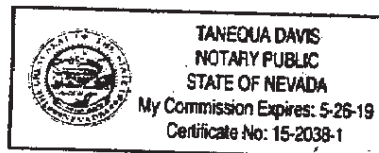
Suite 2800

Minneapolis, MN 55402

Attention: Thomas F. Berndt

Sworn and subscribed before me this
20th day of August, 2017.

Notary Public

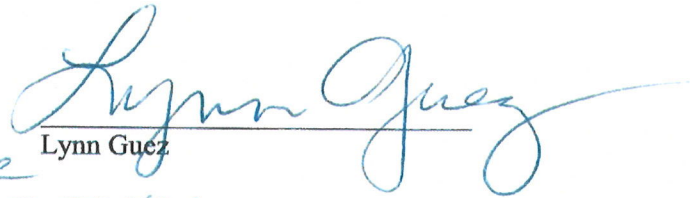


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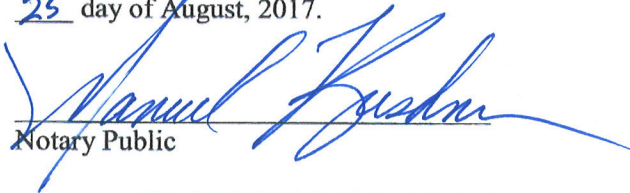
Address:
Lynn Guez

1320 SW 21st Lane
Boca Raton, FL 33486

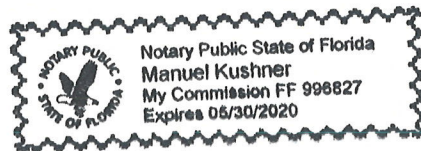

Lynn Guez

With copies to:
Robins Kaplan LLP
800 LaSalle Avenue
Suite 2800
Minneapolis, MN 55402
Attention: Thomas F. Berndt

Sworn and subscribed before me this
25 day of August, 2017.


Notary Public

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TRANSFeree

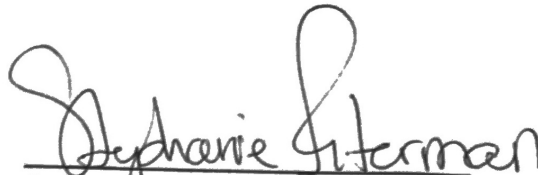
Address:

Stephanie Rosenthal

22631 Morning Glory Cir.

Bradenton, FL

34202


Stephanie Fiterman (f/k/a Stephanie Rosenthal)

With copies to:

Robins Kaplan LLP


800 LaSalle Avenue

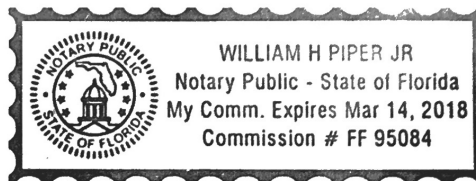
Suite 2800

Minneapolis, MN 55402

Attention: Thomas F. Berndt

Sworn and subscribed before me this
28 day of August, 2017.


Notary Public



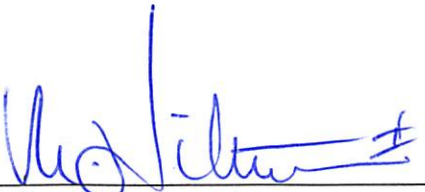
[TRANSFeree SIGNATURE PAGE TO SETTLEMENT AGREEMENT]

TRANSFeree

Address:

Miles Q. Fiterman II

2834 Lee Ave. N.
Golden Valley, MN 55422


Miles Q. Fiterman II

With copies to:

Robins Kaplan LLP

800 LaSalle Avenue

Suite 2800

Minneapolis, MN 55402

Attention: Thomas F. Berndt

Sworn and subscribed before me this
28th day of August, 2017.


Notary Public

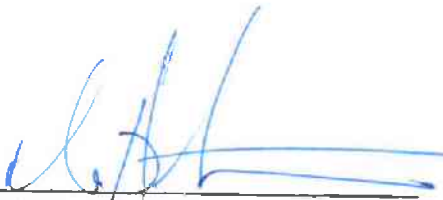


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TRANSFeree

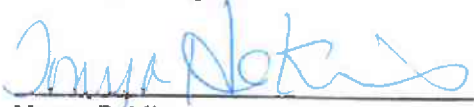
Address:

Matthew Fiterman
2223 Trade Centerway
Naples, Florida
34109


Matthew Fiterman

With copies to:
Robins Kaplan LLP
800 LaSalle Avenue
Suite 2800
Minneapolis, MN 55402
Attention: Thomas F. Berndt

Sworn and subscribed before me this
28 day of August, 2017.


Notary Public



[TRANSFeree SIGNATURE PAGE TO SETTLEMENT AGREEMENT]

SCHEDULE 1

Wiring Instructions

Citi Private Bank

153 East 53rd Street, 23rd Floor

New York, New York 10022

ABA No.: 021000089

Swift Code: CITIUS33

Account Name: Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff
Investment Securities LLC


Account No.: 

EXHIBIT A

Form of Stipulation for Entry of Judgment

**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.

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

Plaintiff,

v.

MILES Q. FITERMAN REVOCABLE TRUST;
MILES Q. FITERMAN NON-EXEMPT
MARITAL TRUST; TOWERS
MANAGEMENT COMPANY LLC;
FITERMAN GST EXEMPT MARITAL
TRUST; MILES FITERMAN FAMILY
TRUST; SHIRLEY FITERMAN, individually,
and in her capacity as Trustee for the MILES Q.
FITERMAN REVOCABLE TRUST and the
MILES Q. FITERMAN NON-EXEMPT
MARITAL TRUST; STEVEN FITERMAN,
individually, and in his capacity as Trustee for
the MILES Q. FITERMAN REVOCABLE
TRUST and the MILES Q. FITERMAN
NONEXEMPT MARITAL TRUST; VALERIE
HERSCHMAN, individually, and in her capacity
as Trustee for the MILES Q. FITERMAN
REVOCABLE TRUST and the MILES Q.

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

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 10-04337 (SMB)

FITERMAN NON-EXEMPT MARITAL
TRUST; KAREN WASSERMAN; LYNN
GUEZ; STEPHANIE ROSENTHAL; MILES Q.
FITERMAN II; AND MATTHEW FITERMAN,

Defendants.

STIPULATION FOR ENTRY OF JUDGMENT

IT IS HEREBY STIPULATED AND AGREED by and between plaintiff Irving H. Picard, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and for the Estate of Bernard L. Madoff (the “Trustee”), and defendants Miles Q. Fiterman Non-Exempt Marital Trust and Shirley Fiterman (“Defendants”) (the Trustee and Defendants are together referred to as the “Parties”, and each individually as a “Party”), as follows:

1. That in the event of default in performance of the Settlement Agreement and Release made and entered into as of August 28, 2017 between the Parties (the “Settlement Agreement”), the Trustee shall be entitled to immediate entry of a Judgment Pursuant to Stipulation, a copy of which is attached hereto as Exhibit 1, entered against Defendants in the amount of Thirty Eight Million Three Hundred Fifty Six Thousand Nine Hundred Ninety Two United States Dollars (\$38,356,992.00), reduced by any payments made by Defendants under the Settlement Agreement.

2. That judgment will be entered forthwith upon a default under the Settlement Agreement, upon the ex parte filing of a Declaration Regarding Default in Payments by the Trustee or his attorney of record which shall set forth the amount of any payments received from Defendants.

3. That each and all of the allegations, claims and contentions of the Trustee alleged in the Complaint on file herein are true and that Defendants confirm the amount set forth in paragraph 1 above.

4. That judgment shall be final for all purposes upon entry of judgment and each Party waives any right to appeal therefrom.

5. That Defendants, represented in this action by counsel, have read and understand the contents of this Stipulation for Entry of Judgment (this "Stipulation").

6. That this Stipulation shall not be filed unless and until there is a default under the Settlement Agreement which has not been cured after required notice. This Stipulation shall be returned to Defendants when Defendants have paid all sums and satisfied all obligations arising under the Settlement Agreement.

7. That the declaration of the Trustee or his attorney of record shall be sufficient to establish the exact sum due and owing pursuant to this Stipulation and shall be sufficient to secure the entry of judgment and the issuance of a writ of execution, in accordance with the terms set forth herein.

8. That the judgment shall bear interest at the applicable rate per annum from the Effective Date of the Settlement Agreement as stated in the declaration of the Trustee or his attorney of record.

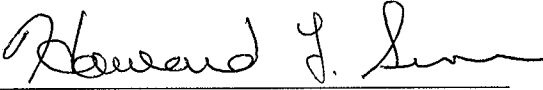
9. That Defendants hereby expressly waive notice of entry of judgment, notice of and right to any hearing regarding entry of judgment. The Trustee shall provide Defendants with fifteen (15) business days' notice prior to requesting entry of judgment on an *ex parte* basis.

10. This Stipulation may be signed in counterparts, all of which when taken together shall constitute the agreement of the Parties hereto. A photocopy, facsimile or email signature to this Stipulation shall be deemed as an original signature for any and all purposes.

11. That the court shall retain jurisdiction over the Parties to enforce this Stipulation until there is full performance of the terms hereof.

Dated: August 27, 2017

WINDELS MARX LANE & MITTENDORF, LLP

By: 

Howard L. Simon
(hsimon@windelsmarx.com)
156 West 56th Street
New York, New York 10019
Tel: (212) 237-1000

*Special Counsel 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*

ROBINS KAPLAN LLP

By: _____

Stephen P. Safranski, Esq.
(SSafranski@RobinsKaplan.com)
Thomas F. Berndt, Esq.
(TBerndt@RobinsKaplan.com)
800 LaSalle Avenue
Suite 2800
Minneapolis, MN 55402
Tel: (612) 349-0930

Attorneys for Defendants


Dated: August 29, 2017

WINDELS MARX LANE & MITTENDORF, LLP

By: _____
Howard L. Simon
(hsimon@windelsmarx.com)
156 West 56th Street
New York, New York 10019
Tel: (212) 237-1000

*Special Counsel 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*

ROBINS KAPLAN LLP

By:  _____
Stephen P. Safranski, Esq.
(SSafranski@RobinsKaplan.com)
Thomas F. Berndt, Esq.
(TBerndt@RobinsKaplan.com)
800 LaSalle Avenue
Suite 2800
Minneapolis, MN 55402
Tel: (612) 349-0930

Attorneys for Defendants

**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)

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

Plaintiff,

v.

MILES Q. FITERMAN REVOCABLE TRUST;
MILES Q. FITERMAN NON-EXEMPT
MARITAL TRUST; TOWERS
MANAGEMENT COMPANY LLC;
FITERMAN GST EXEMPT MARITAL
TRUST; MILES FITERMAN FAMILY
TRUST; SHIRLEY FITERMAN, individually,
and in her capacity as Trustee for the MILES Q.
FITERMAN REVOCABLE TRUST and the
MILES Q. FITERMAN NON-EXEMPT
MARITAL TRUST; STEVEN FITERMAN,
individually, and in his capacity as Trustee for
the MILES Q. FITERMAN REVOCABLE
TRUST and the MILES Q. FITERMAN
NONEXEMPT MARITAL TRUST; VALERIE
HERSCHMAN, individually, and in her capacity
as Trustee for the MILES Q. FITERMAN
REVOCABLE TRUST and the MILES Q.
FITERMAN NON-EXEMPT MARITAL
TRUST; KAREN WASSERMAN; LYNN

Adv. Pro. No. 10-04337 (SMB)

GUEZ; STEPHANIE ROSENTHAL; MILES Q.
FITERMAN II; AND MATTHEW FITERMAN,

Defendants.

JUDGMENT PURSUANT TO STIPULATION

Pursuant to the stipulation between Plaintiff Irving H. Picard, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and for the Estate of Bernard L. Madoff (the “Plaintiff”), on the one hand, and Miles Q. Fiterman Non-Exempt Marital Trust and Shirley Fiterman, on the other, judgment is entered in favor of Plaintiff and against Miles Q. Fiterman Non-Exempt Marital Trust and Shirley Fiterman in the amount of Thirty Eight Million Three Hundred Fifty Six Thousand Nine Hundred Ninety Two United States Dollars (\$38,356,992.00). The unpaid portion of the judgment shall bear interest at the applicable rate per annum from _____.

Dated: _____, 201_

HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Notice of Trustee's Determination of Claim

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008¹

NOTICE OF TRUSTEE'S DETERMINATION OF CLAIM

[DATE]

Shirley Fiterman
c/o Brian M. O'Connell, Esq.
Ciklin Lubitz & O'Connell
515 North Flagler Drive, 20th Floor
West Palm Beach, FL 33401

Dear Shirley Fiterman:

PLEASE READ THIS NOTICE CAREFULLY.

The liquidation of the business of BERNARD L. MADOFF INVESTMENT SECURITIES LLC ("BLMIS") is being conducted by Irving H. Picard, Trustee under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq. ("SIPA"), pursuant to an order entered on December 15, 2008 by the United States District Court for the Southern District of New York.

The Trustee has made the following determination regarding your claim on BLMIS Account No. 1F0198, designated as Claim No. 003156:

Your claim for a credit balance of \$0.23 and for securities is **DENIED**. No securities were ever purchased for your account.

Your claim for BLMIS Account No. 1F0198, and the Trustee's claims against you in *Picard v. Miles Q. Fiterman Revocable Trust, et al*, Adv. Pro. 10-04337 (SMB), have been settled on the terms and subject to the conditions set forth in that certain **SETTLEMENT AGREEMENT AND RELEASE**, dated as of _____, 2017 between you and the Trustee, amongst others, and approved by the Bankruptcy Court by Order entered _____, 2017.

¹ Section 78lll(7)(B) of SIPA states that the filing date is "the date on which an application for a protective decree is filed under 78eee(a)(3)," except where the debtor is the subject of a proceeding pending before a United States court "in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term 'filing date' means the date on which such proceeding was commenced." Section 78lll(7)(B). Thus, even though the Application for a protective decree was filed on December 15, 2008, the Filing Date in this action is on December 11, 2008.

Pursuant to the terms of and solely for purposes of the **SETTLEMENT AGREEMENT AND RELEASE**, your claim is **ALLOWED** for \$1,505,000.00 (the “Allowed Claim”) and will be partially satisfied in the amount of \$500,000.00, with the funds being advanced by SIPC pursuant to section 78fff-3(a)(1) of SIPA. [At this time (and through the Eighth Distribution), you are entitled to \$904,474.90 for catch-up distributions the Trustee has previously made.] All payments in satisfaction of your **ALLOWED CLAIM** will be made after the Trustee receives the Settlement Payment in full, pursuant to the terms of the **SETTLEMENT AGREEMENT AND RELEASE**. [With this payment, your **ALLOWED CLAIM** will be fully satisfied OR the Trustee expects that there will be future distribution of which you will be notified.]

You agreed to waive the thirty (30) day objection period in connection with this determination, as set forth in the **SETTLEMENT AGREEMENT AND RELEASE**.

Irving H. Picard

Trustee for the Liquidation of the Business of
Bernard L. Madoff Investment Securities LLC

cc: Robins Kaplan LLP
800 LaSalle Avenue
Suite 2800
Minneapolis, MN 55402
Attn: Thomas F. Berndt

EXHIBIT C

Notice of Trustee's Determination of Claim

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008¹

NOTICE OF TRUSTEE'S DETERMINATION OF CLAIM

[DATE]

Fairway Partnership II

[c/o

_____]

Dear Fairway Partnership II:

PLEASE READ THIS NOTICE CAREFULLY.

The liquidation of the business of BERNARD L. MADOFF INVESTMENT SECURITIES LLC ("BLMIS") is being conducted by Irving H. Picard, Trustee under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq. ("SIPA"), pursuant to an order entered on December 15, 2008 by the United States District Court for the Southern District of New York.

The Trustee has made the following determination regarding your claim on BLMIS Account No. 1F0190, designated as Claim No. 003077:

Your claim for a credit balance of \$0.47 and for securities is **DENIED**. No securities were ever purchased for your account.

Your claim for BLMIS Account No. 1F0190, and the Trustee's claims against you in *Picard v. Miles Q. Fiterman Revocable Trust, et al*, Adv. Pro. 10-04337 (SMB), have been settled on the terms and subject to the conditions set forth in that certain **SETTLEMENT AGREEMENT AND RELEASE**, dated as of _____, 2017 between you and the Trustee, amongst others, and approved by the Bankruptcy Court by Order entered _____, 2017.

¹ Section 78III(7)(B) of SIPA states that the filing date is "the date on which an application for a protective decree is filed under 78eee(a)(3)," except where the debtor is the subject of a proceeding pending before a United States court "in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term 'filing date' means the date on which such proceeding was commenced." Section 78III(7)(B). Thus, even though the Application for a protective decree was filed on December 15, 2008, the Filing Date in this action is on December 11, 2008.

Pursuant to the terms of and solely for purposes of the **SETTLEMENT AGREEMENT AND RELEASE**, your claim is **ALLOWED** for \$272,000.00 (the “Allowed Claim”) and will be fully satisfied in the amount of \$272,000.00, with the funds being advanced by Securities Investor Protection Corporation pursuant to section 78fff-3(a)(1) of SIPA. All payments in satisfaction of your **ALLOWED CLAIM** will be made after the Trustee receives the Settlement Payment in full, pursuant to the terms of the **SETTLEMENT AGREEMENT AND RELEASE**.

You agreed to waive the thirty (30) day objection period in connection with this determination, as set forth in the **SETTLEMENT AGREEMENT AND RELEASE**.

Irving H. Picard

Trustee for the Liquidation of the Business of
Bernard L. Madoff Investment Securities LLC

cc: [_____]

**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.

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

Plaintiff,

v.

MILES Q. FITERMAN REVOCABLE TRUST;
MILES Q. FITERMAN NON-EXEMPT
MARITAL TRUST; TOWERS
MANAGEMENT COMPANY LLC;
FITERMAN GST EXEMPT MARITAL
TRUST; MILES FITERMAN FAMILY
TRUST; SHIRLEY FITERMAN, individually,
and in her capacity as Trustee for the MILES Q.
FITERMAN REVOCABLE TRUST and the
MILES Q. FITERMAN NON-EXEMPT
MARITAL TRUST; STEVEN FITERMAN,
individually, and in his capacity as Trustee for
the MILES Q. FITERMAN REVOCABLE
TRUST and the MILES Q. FITERMAN
NONEXEMPT MARITAL TRUST; VALERIE
HERSCHMAN, individually, and in her capacity
as Trustee for the MILES Q. FITERMAN
REVOCABLE TRUST and the MILES Q.

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

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 10-04337 (SMB)

FITERMAN NON-EXEMPT MARITAL
TRUST; KAREN WASSERMAN; LYNN
GUEZ; STEPHANIE ROSENTHAL; MILES Q.
FITERMAN II; AND MATTHEW FITERMAN,

Defendants.

**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 THE DEFENDANTS**

Upon the motion (ECF Number ____, the “Motion”)¹ of Irving H. Picard, Esq. (the “Trustee”) as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC and the chapter 7 estate of Bernard L. Madoff, seeking entry of an order, pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, approving the agreement, by and between the Trustee and the Defendants as more particularly set forth in the agreement annexed thereto (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 Order Establishing Notice Procedures (SIPA Proceeding, ECF No. 4560); and the Court having considered the Affidavit of Irving H. Picard in support of the Motion; and it further appearing the relief sought in the Motion is appropriate based upon the record of the hearing held before this Court to consider the Motion; and it further appearing that this Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and after due deliberation; and sufficient cause appearing therefor; it is

ORDERED, that the Motion is granted; and it is further

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

ORDERED, that the Agreement between the Trustee and the Defendants is hereby approved and authorized; and it is further

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

ORDERED, that this Court shall have exclusive jurisdiction over any and all disputes between or among the Parties arising out of or relating to the Agreement, as set forth more fully in the Agreement.

Dated: New York, New York
_____, 2017

HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

Windels Marx Lane & Mittendorf, LLP
156 West 56th Street
New York, New York 10019
Tel: (212) 237-1000
Howard L. Simon (hsimon@windelsmarx.com)
Kim M. Longo (klongo@windelsmarx.com)
John J. Tepedino (jtepedino@windelsmarx.com)

Hearing Date: October 3, 2017 at 10 a.m.
Objection Deadline: September 26, 2017 at 5 p.m.

**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.

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

Plaintiff,

v.

MILES Q. FITERMAN REVOCABLE TRUST;
MILES Q. FITERMAN NON-EXEMPT
MARITAL TRUST; TOWERS
MANAGEMENT COMPANY LLC;
FITERMAN GST EXEMPT MARITAL
TRUST; MILES FITERMAN FAMILY
TRUST; SHIRLEY FITERMAN, individually,
and in her capacity as Trustee for the MILES Q.
FITERMAN REVOCABLE TRUST and the
MILES Q. FITERMAN NON-EXEMPT

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

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 10-04337 (SMB)

MARITAL TRUST; STEVEN FITERMAN, individually, and in his capacity as Trustee for the MILES Q. FITERMAN REVOCABLE TRUST and the MILES Q. FITERMAN NONEXEMPT MARITAL TRUST; VALERIE HERSCHMAN, individually, and in her capacity as Trustee for the MILES Q. FITERMAN REVOCABLE TRUST and the MILES Q. FITERMAN NON-EXEMPT MARITAL TRUST; KAREN WASSERMAN; LYNN GUEZ; STEPHANIE ROSENTHAL; MILES Q. FITERMAN II; AND MATTHEW FITERMAN,

Defendants.

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

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

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 among the Trustee and the Defendants.

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

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

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 would result in a recovery by the estate of \$37,300,000.00 in settlement payments.

The settlement resolves all claims against the Defendants as to the Adversary Proceeding without the need for protracted, costly, and uncertain litigation. I recognize that litigating these claims would undoubtedly be complex, create significant delay, and involve both litigation risk and difficulties associated with collection.

This settlement represents a good faith, complete, and total settlement between the Trustee and the Defendants as to any and all disputes between them raised in the Adversary Proceeding and as to BLMIS customer claims.

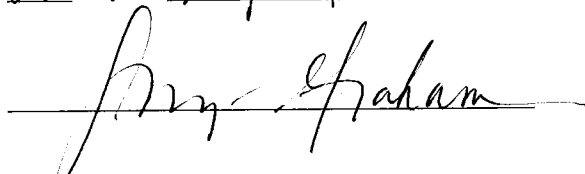
The Agreement also greatly furthers the interests of the customers of BLMIS with allowed claims by adding \$37,300,000.00 to the fund of BLMIS customer property.

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

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


IRVING H. PICARD

Sworn and subscribed before me this
29th day of August, 2017.



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