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*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities LLC
and the Chapter 7 Estate of Bernard L. Madoff*

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

In re:

BERNARD L. MADOFF,

Debtor.

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

Plaintiff,

v.

J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,
ASCOT FUND LTD., GABRIEL CAPITAL
CORPORATION,

Defendants.

No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 09-01182 (SMB)

**MOTION FOR ENTRY OF ORDER PURSUANT TO SECTION 105(a)
OF THE BANKRUPTCY CODE AND RULES 2002 AND 9019 OF THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE APPROVING
SETTLEMENT AGREEMENT BETWEEN THE TRUSTEE AND ASCOT
PARTNERS, L.P., THROUGH ITS RECEIVER, RALPH C. DAWSON, ASCOT
FUND LIMITED, J. EZRA MERKIN, AND GABRIEL CAPITAL CORPORATION**

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

Irving H. Picard (the “Trustee”), as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.* (“SIPA”)¹ and the substantively consolidated chapter 7 estate of Bernard L. Madoff (“Madoff,” and together with BLMIS, the “Debtor”), by and through his undersigned counsel, submits this motion (the “Motion”) seeking entry of an order (the “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, approving the settlement, the terms and conditions of which are set forth in the settlement agreement (the “Agreement”), annexed hereto as Exhibit A, by and between the Trustee, on the one hand, and Ascot Partners, L.P. (“Ascot Partners,”) through its Receiver, Ralph C. Dawson, Ascot Fund Limited (“Ascot Fund”), J. Ezra Merkin (“Merkin”), and Gabriel Capital Corporation (“Gabriel Capital Corp.” and together with Merkin, “GCC”), on the other hand.² In support of the Motion, the Trustee respectfully represents as follows:

PRELIMINARY STATEMENT

The Trustee commenced this action against the Defendants, seeking to, among other things, recover the value of all alleged fraudulent transfers received by Ascot Partners in the two years prior to the December 11, 2008 liquidation filing date of BLMIS (the “Transfers”).

Following several rounds of negotiations, the Parties were able to reach a consensual resolution. The Parties entered into the Agreement, which represents a good faith, complete settlement of all disputes between the Trustee and the Defendants, including the customer claim

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

² Ascot Partners, Ascot Fund, Merkin and Gabriel Capital Corp. are collectively referred herein as the “Defendants.” The Defendants together with the Trustee are hereinafter the “Parties.”

asserted by Ascot Partners in connection with BLMIS Account 1A0058. The settlement will benefit the customer property fund by \$280,000,000, which represents 100% of the value of the Transfers received by Ascot Partners. Therefore, the Trustee respectfully requests that the Court approve this settlement.

BACKGROUND

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

2. On December 15, 2008, pursuant to SIPA § 78eee(a)(4)(A), the SEC consented to a combination of its own action with an application of the Securities Investor Protection Corporation (“SIPC”). Thereafter, pursuant to SIPA § 78eee(a)(3), SIPC filed an application in the District Court alleging, *inter alia*, that BLMIS was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protection afforded by SIPA.

3. Also on December 15, 2008, the District Court entered the Protective Decree, to which BLMIS consented, which, in pertinent part:

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

³ In this case, the Filing Date is the date on which the SEC commenced its suit against BLMIS, December 11, 2008, and a receiver was appointed for BLMIS. *See* SIPA § 78lll(7)(B).

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

THE CLAIMS AGAINST THE DEFENDANTS

5. Merkin is an individual residing and maintaining a business office in New York, New York. At all relevant times, Merkin was Gabriel Capital Corp.'s sole shareholder and sole director. At all times prior to the Filing Date, Merkin was the general partner of Ascot Partners.

6. Ascot Partners is a Delaware limited partnership, formed in 1992, with a principal place of business in New York, New York. Ascot Partners invested directly with BLMIS and maintained BLMIS Account No. 1A0058 beginning in or around January 1993 through December 2008.

7. Pursuant to a stipulation and order entered in the matter captioned *People v. J. Ezra Merkin and Gabriel Capital Corporation*, Index No. 450879/2009 in the Supreme Court of the State of New York, County of New York, David B. Pitofsky was appointed the receiver of Ascot Partners on July 14, 2009. On May 2, 2013, the court appointed Ralph C. Dawson as successor Receiver of Ascot Partners to replace David B. Pitofsky.

8. Ascot Fund is a private investment fund for foreign investors and other non-U.S. taxpayers incorporated in the Cayman Islands in 1992. In early 2003, Ascot Fund entered into a master-feeder relationship with Ascot Partners whereby Ascot Fund invested substantially all of its capital as a limited partner in Ascot Partners.

9. Gabriel Capital Corp. was incorporated in December 1988 under the laws of Delaware as Ariel Management Corporation and subsequently changed its name to Gabriel Capital Corp. in or about 1998.

10. On August 30, 2013, the Trustee filed the Third Amended Complaint (“Third Amended Complaint”). (ECF No. 151). In the Third Amended Complaint, the Trustee added Ascot Fund as a defendant and asserted claims against defendants Merkin, Gabriel Capital Corp., Ariel Fund Ltd. (“Ariel Fund”), Gabriel Capital, L.P. (“Gabriel Fund”), Ascot Partners, and Ascot Fund to, among other things, avoid and recover the Transfers under 11 U.S.C. §§ 544, 547, 548, 550, or 551, SIPA § 78fff-(2)(c)(3), and the New York Debtor and Creditor Law §§ 270–281. The Trustee also asserted claims to disallow the Customer Claim, pursuant to 11 U.S.C. § 502(d), and to equitably subordinate those claims, pursuant to 11 U.S.C. §§ 510(c) and 105(a).

11. On August 12, 2014, the Court entered its decision on Defendants’ motions to dismiss the Third Amended Complaint, denying the motions in part and granting the motions in part. The Court denied the motions to dismiss the Trustee’s actual fraudulent conveyance claims brought under section 548(a)(1) (A), recovery claims under section 550 for initial and subsequent transfers, general partner liability claims, and claim for equitable subordination. The Court granted the motions dismissing the Trustee’s claims under section 548(a)(1)(B), section 544(b)(1), and the New York Debtor & Creditor Law, as well as the claim for equitable disallowance. (ECF No. 212).

12. On February 5, 2015, the Defendants filed their respective Answers to the Third Amended Complaint. (ECF Nos. 260, 261).

13. On June 23, 2015, this Court entered an order approving the settlement between the Trustee and Ariel Fund, Gabriel Fund, and their Receiver. (ECF No. 270). Ariel Fund and Gabriel Fund were dismissed from this proceeding on September 9, 2015. (ECF No. 282). Following

dismissal of Ariel Fund and Gabriel Fund, the remaining defendants in the action were Merkin, Gabriel Capital Corp., Ascot Partners, and Ascot Fund.

14. On January 30, 2017, the Court entered its decision on the Defendants' motions for summary judgment, denying the motions except with respect to the subsequent transfer claims as to Ascot Partners. (ECF No. 327).

THE CLAIMS OF ASCOT PARTNERS AGAINST THE BLMIS ESTATE

15. Prior to July 2, 2009, the bar date for filing claims in the BLMIS bankruptcy case, Ascot Partners filed a customer claim in the SIPA Proceeding, which was assigned claim number 005317. Ascot Partners' customer claim is included as Attachment A to the Agreement.

16. In its customer claim, Ascot Partners alleged losses for money balances. The Parties agree that Ascot Partners' net equity is \$235,734,338.00. (ECF No. 361).

SETTLEMENT DISCUSSIONS

17. During the past month, the Parties engaged in good faith discussions aimed at resolving the Trustee's claims. These discussions followed earlier discussions that had not been successful in resolving the Trustee's claims. The Receiver informed the Trustee throughout that he disputed any liability of Ascot Partners regarding the Transfers. Nevertheless, the Receiver, on behalf of Ascot Partners, engaged in good faith negotiations with the Trustee that yielded the settlement set forth in the Agreement.

18. The Trustee has conducted a comprehensive investigation of the funds Ascot Partners invested with BLMIS. This investigation included, but was not limited to: the review and analysis of the BLMIS-related transactional histories as reflected in the BLMIS account statements of Ascot Partners; correspondence and other records and documents available to the

Trustee; interviews with and depositions of third-party witnesses; meetings with the Receiver and his counsel; and a substantial review of third-party records and documents.

19. After a review of the relevant records and a thorough and deliberate consideration of the uncertainty and risks inherent in all litigation, the Trustee, in the exercise of his business judgment, has determined that it is appropriate to reach a consensual resolution rather than to continue the litigation.

OVERVIEW OF THE AGREEMENT

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

- At the Closing, Ascot Partners and GCC shall pay or cause to be paid to the Trustee the sum of Two Hundred Eighty Million Dollars (\$280,000,000.00) (“Settlement Payment”) in full and final settlement and satisfaction of all claims the Trustee or the BLMIS Estate asserted or could have asserted against Merkin, Gabriel Capital Corp., Ascot Partners, and/or Ascot Fund, and for the release of all Released Claims pursuant to paragraphs 7 through 10 of the Agreement, including, without limitation, all Avoiding Powers Claims, Disallowance and Subordination Claims, and any other claims of the Trustee or the BLMIS Estate of every kind and nature whatsoever, whether known or unknown (as described in paragraph 10), that the Trustee or the BLMIS Estate may have against Merkin, Gabriel Capital Corp., Ascot Partners, and/or Ascot Fund;
- Ascot Partners will not receive a SIPC customer advance;

⁴ Terms not otherwise defined herein shall have the meanings ascribed in the Agreement. In the event of any inconsistency between the definition of terms provided herein and the definition of terms in the Agreement, the Agreement shall prevail.

- At the Closing, the Customer Claim shall be deemed conclusively allowed pursuant to section 502 of the Bankruptcy Code and 15 U.S.C. § 7811(11), equal in priority to other allowed customer claims against the BLMIS Estate, in the amount of Two Hundred Thirty-Five Million Seven Hundred Thirty-Four Thousand Three Hundred Thirty-Eight Dollars (\$235,734,338.00) plus ninety-five percent (95%) of the Settlement Payment, for an aggregate allowed claim amount of Five Hundred One Million Seven Hundred Thirty-Four Thousand Three Hundred Thirty Eight Dollars (\$501,734,338.00) (the “Allowed Claim”). As of the date of this Agreement, the initial amount to be paid by the Trustee to Ascot Partners allocable to the Allowed Claim in respect of a catch-up distribution is \$320,628,311.35 (63.904% of the Allowed Claim).⁵ Ascot Partners and GCC shall satisfy the Settlement Payment by causing Ascot Partners to convey, assign, endorse, and transfer to the Trustee the sum of Two Hundred Eighty Million Dollars (\$280,000,000.00) from the catch-up distribution owed to Ascot Partners under the Allowed Claim pursuant to paragraph 13. If at the Closing, the Trustee has made a further distribution to customers holding allowed claims, then any additional amount owed to Ascot Partners based on the then distribution formula will be added to the allocable amount of the Allowed Claim.
- At the Closing, in order to ensure that the Settlement Payment and the Allowed Claim cannot be avoided as a preference pursuant to 11 U.S.C. § 547(b) of the Bankruptcy Code or otherwise avoided, unwound or recovered under any similar

⁵ As of the date of the Agreement, this Court has approved nine *pro rata* interim distributions to BLMIS customers with allowed customer claims of 4.602%, 33.556%, 4.721%, 3.180%, 2.743%, 8.262%, 1.305%, 1.729%, and 3.806% respectively (63.904% total).

laws relating to the relief from debts or the protection of debtors, as to Ascot Partners, the Parties agree that the catch-up distribution from the Allowed Claim (including satisfaction of the Settlement Payment as set forth in Paragraph 2) shall be made to an escrow agent (“Escrow Agent”) and pursuant to an escrow agreement (“Escrow Agreement”) for a period of ninety (90) days (“Escrow Period”). The Escrow Agent and Escrow Agreement shall be agreed upon by Ascot Partners and the Trustee. The Trustee shall bear the fees and costs of the Escrow Agent and Escrow Account, which shall be reasonable, pursuant to the Escrow Agreement.

- The Trustee shall release, acquit, and forever discharge the Defendants and their related parties on the specific terms set forth in the Agreement;
- The Defendants shall release, acquit, and forever discharge the Trustee and all his agents and BLMIS and its consolidated estate, on the specific terms set forth in the Agreement;
- Ascot Partners shall make no payment from the Allowed Claim, either directly or indirectly, to Merkin, Gabriel Capital Corp., or any other person, entity or trust controlled by or for the benefit of Merkin or his immediate family, as set forth in specific terms in the Agreement.

RELIEF REQUESTED

21. 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

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

23. The Second Circuit has stated that a bankruptcy court, in determining whether to approve a compromise, should not decide the numerous questions of law and fact raised by the compromise, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983); *see also Masonic Hall & Asylum Fund v. Official Comm. Of Unsecured Creditors (In re Refco, Inc.)*, 2006 WL 3409088 *1, *7 (S.D.N.Y. Nov. 16, 2006); *In re Ionosphere Clubs*, 156 B.R. at 426; *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993) (“[T]he court need not conduct a ‘mini-trial’ to determine the merits of the underlying litigation”); *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991).

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

- (i) the probability of success in the litigation;
- (ii) the difficulties associated with collection;
- (iii) the complexity of the litigation, and the attendant expense, inconvenience, and delay; and

(iv) the paramount interests of the creditors (or in this case, customers).

In re Refco, Inc., 2006 WL 3409088 at *8; *Nellis v. Shugrue*, 165 B.R. 115, 122 (S.D.N.Y. 1994) (citing *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 292 (2d Cir. 1992), *cert. denied*, 506 U.S. 1088 (1993)).

25. The bankruptcy court may credit and consider the opinions of the trustee or debtor and their counsel in determining whether a settlement is fair and equitable. *See In re Purofied Down Prods.*, 150 B.R. at 522; *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. at 505. Even though the Court has discretion to approve settlements and must independently evaluate the reasonableness of the settlement, *In re Rosenberg*, 419 B.R. 532, 536 (Bankr. E.D.N.Y. 2009), the business judgment of the trustee and his counsel should be considered in determining whether a settlement is fair and equitable. *In re Chemtura Corp.*, 439 B.R. 561, 594 (Bankr. S.D.N.Y. 2010). The competency and experience of counsel supporting the settlement may also be considered. *Nellis*, 165 B.R. at 122. Finally, the court should be mindful of the principle that “the law favors compromise.” *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. at 505 (quoting *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976)).

26. The Trustee believes that the Agreement sets forth fair and equitable terms, which fall well above the lowest point in the range of reasonableness. *See Exhibit C, Affidavit of Irving H. Picard in Support of Motion.* The Agreement furthers the interest of BLMIS customers by (i) adding to the fund of customer property \$280,000,000.00; (ii) recovering 100% of the Transfers; (iii) and reducing the amount of the section 502(h) claim that arise in connection with the Settlement Payments by 5%. Furthermore, the Agreement resolves all claims against the Defendants and avoids the cost and delay of what could otherwise be a lengthy and contentious litigation.

CONCLUSION

27. In sum, the Trustee submits that the Agreement should be approved because it represents a fair and reasonable compromise of the Trustee's claims against the Defendants and the related customer claim against the BLMIS estate. Because the Agreement is well within the "range of reasonableness" and confers a benefit on the estate, the Trustee respectfully requests that the Court enter an Order approving the Agreement.

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
June 13, 2018

Respectfully submitted,

BAKER & HOSTETLER LLP

By: /s/ David J. Sheehan

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Securities LLC and the Chapter 7
Estate of Bernard L. Madoff*

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Hearing Date: July 10, 2018 at 2:00 p.m.
Objections Due: June 26, 2018 at 4:00 p.m.

*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
and the Chapter 7 Estate of Bernard L. Madoff*

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

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

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

Plaintiff,

v.

J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,
ASCOT FUND LTD., GABRIEL CAPITAL
CORPORATION,

Defendants.

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

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 09-01182 (SMB)

NOTICE OF MOTION FOR ENTRY OF ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE AND RULES 2002 AND 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE APPROVING THE SETTLEMENT AGREEMENT BETWEEN THE TRUSTEE AND ASCOT PARTNERS, L.P., THROUGH ITS RECEIVER, RALPH C. DAWSON, ASCOT FUND LIMITED, J. EZRA MERKIN, AND GABRIEL CAPITAL CORPORATION

PLEASE TAKE NOTICE that Irving H. Picard (the “Trustee”), as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–III (“SIPA”), and the substantively consolidated estate of Bernard L. Madoff, by and through his undersigned counsel, will move before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge, at the United States Bankruptcy Court, the Alexander Hamilton Customs House, One Bowling Green, New York, New York 10004, on **July 10, 2018 at 2:00 p.m.**, or as soon thereafter as counsel may be heard, seeking entry of an order, pursuant to section 105(a) of the United States Bankruptcy Code and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, approving a certain settlement agreement by and between the Trustee and Ascot Partners, L.P., through its receiver, Ralph C. Dawson, Ascot Fund Limited, J. Ezra Merkin and Gabriel Capital Corporation as more particularly set forth in the motion annexed hereto (the “Motion”).

PLEASE TAKE FURTHER NOTICE that written objections to the Motion must be filed with the Clerk of the United States Bankruptcy Court, One Bowling Green, New York, New York 10004 by no later than **4:00 p.m. on June 26, 2018** (with a courtesy copy delivered to the Chambers of the Honorable Stuart M. Bernstein) and must be served upon (a) Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, New York 10111, (b) Judith

A. Archer, Sarah O'Connell and David B. Schwartz, Norton Rose Fulbright US LLP, 1301 Avenue of the Americas, New York, New York 10019, (c) Andrew J. Levander and Neil A. Steiner, Dechert LLP, 1095 Avenue of the Americas, New York, New York 10036 and (d) Securities Investor Protection Corporation, 1667 K Street, N.W., Suite 1000, Washington D.C. 20006, Attn: Kevin Bell, Esq. 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 in accordance with Bankruptcy Rules 2002 and 9019, notice of the Motion has been given to (i) SIPC; (ii) the SEC; (iii) the Internal Revenue Service; (iv) the United States Attorney for the Southern District of New York; (v) Judith A. Archer, Sarah O'Connell, and David B. Schwartz, Norton Rose Fulbright US LLP, 1301 Avenue of the Americas, New York, NY 10019; and (vi) Andrew J. Levander and Neil A. Steiner, Dechert LLP, 1095 Avenue of the Americas, New York, NY 10036. Notice of this motion will also be provided via email and/or U.S. Mail to all persons who have filed notices of appearance in the BLMIS proceeding and to all defendants in this adversary proceeding pursuant to the Order Establishing Notice Procedures and Limiting Notice. *SIPC v. BLMIS*, Adv. No. 08-01789(SMB) (Bankr. S.D.N.Y.), ECF No. 4560. The Trustee submits that no other or further notice is required.

PLEASE TAKE FURTHER NOTICE that failure to file timely objections may result in the entry of an order granting the relief requested in the Motion without further notice to any party or an opportunity to be heard.

Dated: June 13, 2018
New York, New York

Respectfully submitted,

BAKER & HOSTETLER LLP

By: /s/ David J. Sheehan
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Trustee for the Substantively Consolidated
SIPA Liquidation of Bernard L. Madoff
Investment Securities LLC and the Chapter 7
Estate of Bernard L. Madoff*

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement, dated as of June 12, 2018 (“Agreement”), is made by and among Irving H. Picard, in his capacity as the trustee (“Trustee”) for the liquidation proceedings under the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. § 78aaa *et seq.* (“SIPA”), of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the substantively consolidated chapter 7 estate of Bernard L. Madoff (“Madoff”), and J. Ezra Merkin (“Merkin”) and Gabriel Capital Corporation (“Gabriel Capital Corp.” and, together with Merkin, “GCC”), and Ralph C. Dawson, Esq., as the appointed Receiver of Ascot Partners, L.P. (“Ascot Partners”),¹ and Ascot Fund Limited (“Ascot Fund”). The Trustee, Merkin, Gabriel Capital Corp., Ascot Partners (including its Receiver) and Ascot Fund, collectively shall be referred to herein as the “Parties.”

BACKGROUND

- A. BLMIS and its predecessors were registered broker-dealers and members of the Securities Investor Protection Corporation (“SIPC”).
- B. On December 11, 2008 (the “Filing Date”), the Securities and Exchange Commission (the “SEC”) filed a complaint in the United States District Court for the Southern District of New York (the “District Court”) against BLMIS and Madoff.
- C. On December 15, 2008, the District Court entered an order under SIPA, which, in pertinent part, appointed the Trustee for the liquidation of the business of BLMIS under section 5(b)(3) of SIPA and removed the case to the Bankruptcy Court under section 5(b)(4) of SIPA, where it is pending as Case No. 08-01789 (SMB) (the “SIPA Proceeding”). The Trustee is duly qualified to serve and act on behalf of the BLMIS estate (the “BLMIS Estate”). By Order dated June 9, 2009, the Chapter 7 estate of Madoff was substantively consolidated with the BLMIS Estate.
- D. Ascot Partners maintained an account with BLMIS, designated account no. 1A0058, which was opened in or around January 1993. Ascot Partners withdrew Two Hundred Eighty Million Dollars (\$280,000,000.00) from its BLMIS account (the “Transfers”) during the two-year period prior to the Filing Date.
- E. On or about March 3, 2009, Ascot Partners filed a customer claim with the Trustee, which the Trustee has designated as Claim No. 005317 (“Customer Claim”). The Customer Claim is included as Attachment A to this Agreement. The Customer Claim asserts that Ascot Partners is entitled to a claim for money balances as of December 11, 2008. The Parties agree that Ascot Partners’ net equity equals Two Hundred Thirty-Five Million Seven Hundred Thirty-Four Thousand Three Hundred Thirty-Eight Dollars (\$235,734,338.00).

¹ The New York Supreme Court appointed David B. Pitofsky as Receiver on June 30, 2009 by a Stipulation and Order entered in the matter captioned *People v. J. Ezra Merkin and Gabriel Capital Corporation*, Index No. 450879/2009, Supreme Court of the State of New York, County of New York (“NYAG Action”). On May 2, 2013, the court appointed Ralph C. Dawson to replace David B. Pitofsky.

G. On August 30, 2013, the Trustee filed the Third Amended Complaint (“Third Amended Complaint”) in an adversary proceeding captioned *Picard v. J. Ezra Merkin, et al.*, Adv. Pro. No. 09-1182 (SMB) (the “Adversary Proceeding”). In the Third Amended Complaint, the Trustee added Ascot Fund as a defendant and asserted claims against defendants Merkin, Gabriel Capital Corp., Ariel Fund Ltd. (“Ariel Fund”), Gabriel Capital, L.P. (“Gabriel Fund”), Ascot Partners, and Ascot Fund to, among other things, avoid and recover the Transfers under 11 U.S.C. §§ 544, 547, 548, 550, or 551, SIPA § 78fff-(2)(c)(3), and the New York Debtor and Creditor Law §§ 270–281 (“Avoiding Powers Claims”). The Trustee also asserted claims to disallow the Customer Claim, pursuant to 11 U.S.C. § 502(d), and to equitably subordinate those claims, pursuant to 11 U.S.C. §§ 510(c) and 105(a) (“Disallowance and Subordination Claims”).

H. On August 12, 2014, the Court entered its decision on defendants’ motions to dismiss the Third Amended Complaint, denying the motions in part and granting the motions in part. The Court denied the motions to dismiss the Trustee’s actual fraudulent transfer claims brought under section 548(a)(1) (A), recovery claims under section 550 for initial and subsequent transfers, the general partner liability claim, and the claim for equitable subordination. The Court granted the motions as to the Trustee’s claims under section 548(a)(1)(B), section 544(b)(1), and the New York Debtor & Creditor Law, as well as the claims for equitable disallowance. *Picard v. Merkin, et al*, 515 B.R. 117 (Bankr. S.D.N.Y. 2014).

I. On February 5, 2015, Ascot Partners and Ascot Fund filed their Answer and Affirmative Defenses to the Third Amended Complaint. (EFC No. 260).

J. On February 5, 2015, Merkin and Gabriel Capital Corp. filed their Answer and Affirmative Defenses to the Third Amended Complaint. (ECF No. 261).

K. On June 23, 2015, this Court entered an order approving the settlement between the Trustee and Ariel Fund, Gabriel Fund, and their Receiver. (ECF No. 270). Ariel Fund and Gabriel Fund were dismissed from this proceeding on September 9, 2015. (ECF No. 282). Following dismissal of Ariel Fund and Gabriel Fund, the remaining defendants in the action were Merkin, Gabriel Capital Corp., Ascot Partners, and Ascot Fund (the “Remaining Defendants”).

L. On January 30, 2017, the Court entered its decision on the Remaining Defendants’ motions for summary judgment, denying the motions except for the subsequent transfer claims as to Ascot Partners. *Picard v. Merkin, et al*, 563 B.R. 737 (Bankr. S.D.N.Y. 2017).

M. The Trustee, on the one hand, and Ascot Partners, Ascot Fund, Merkin, and Gabriel Capital Corp., on the other hand, wish to settle their disputes about the matters described above without the expense, delay and uncertainty of litigation.

NOW, THEREFORE, in consideration of the foregoing, of the mutual covenants, promises and undertakings set forth herein, and for good and valuable consideration, the mutual receipt and sufficiency of which are hereby acknowledged, the Parties agree:

AGREEMENT

1. Payments to Trustee. At the Closing (as defined in paragraph 13), Ascot Partners and GCC shall pay or cause to be paid to the Trustee the sum of Two Hundred Eighty Million Dollars (\$280,000,000.00) (“Settlement Payment”) in full and final settlement and satisfaction of all claims the Trustee or the BLMIS Estate asserted or could have asserted against Merkin, Gabriel Capital Corp., Ascot Partners, and/or Ascot Fund, and for the release of all Released Claims pursuant to paragraphs 7 through 10 below, including without limitation, all Avoiding Powers Claims, Disallowance and Subordination Claims, and any other claims of the Trustee or the BLMIS Estate of every kind and nature whatsoever, whether known or unknown (as described in paragraph 10), that the Trustee or the BLMIS Estate may have against Merkin, Gabriel Capital Corp., Ascot Partners, and/or Ascot Fund.

2. Allowance of Customer Claim. Upon the Closing (as defined in paragraph 13), the Customer Claim shall be deemed conclusively allowed pursuant to section 502 of the Bankruptcy Code and 15 U.S.C. § 7811(11), equal in priority to other allowed customer claims against the BLMIS Estate, in the amount of Two Hundred Thirty-Five Million Seven Hundred Thirty-Four Thousand Three Hundred Thirty-Eight Dollars (\$235,734,338.00) plus ninety-five percent (95%) of the Settlement Payment, for an aggregate allowed claim amount of Five Hundred One Million Seven Hundred Thirty-Four Thousand Three Hundred Thirty Eight Dollars (\$501,734,338.00) (the “Allowed Claim”). As of the date of this Agreement, the initial amount to be paid by the Trustee to Ascot Partners allocable to the Allowed Claim in respect of a catch-up distribution is \$320,628,311.35 (63.904% of the Allowed Claim). Ascot Partners and GCC shall satisfy the Settlement Payment by causing Ascot Partners to convey, assign, endorse, and transfer to the Trustee the sum of Two Hundred Eighty Million Dollars (\$280,000,000.00) from the catch-up distribution owed to Ascot Partners under the Allowed Claim pursuant to paragraph 13. If at the Closing, the Trustee has made a further distribution to customers holding allowed claims, then any additional amount owed to Ascot Partners based on the then distribution formula will be added to the allocable amount of the Allowed Claim.

3. At the Closing (as defined in paragraph 13), Ascot Partners will not receive an advance from SIPC.

4. As part of this Agreement, Ascot Partners warrants that the total distributions to it from the Allowed Claim at closing, from the NYAG Action, and any other monies available to the Receiver do not exceed 100% of Ascot Partners losses in connection with BLMIS. Upon distributions from the Receiver, Ascot Partners shall notify its investors that they may be required to disclose to the Madoff Victim Fund the receipt of such distributions from the Receiver.

5. As part of this Agreement, Ascot Partners agrees that all distributions on the Allowed Claim from the Trustee shall be made to investors of Ascot Partners, except as excluded in paragraph 6 below, and that no distributions on the Allowed Claim from the Trustee shall be paid or used for expenses or fees related to the administration of Ascot Partners.

6. As part of this Agreement, Ascot Partners shall make no distributions on the Allowed Claim from the Trustee, either directly or indirectly to Merkin, Gabriel Capital Corp., or

any other person, entity or trust controlled by or for the benefit of Merkin or his immediate family. Merkin and Gabriel Capital Corp. have separately identified these entities and represent and warrant that this list of entities is complete to the best of their knowledge and reasonable efforts. Merkin and Gabriel Capital Corp. further represent and warrant that no deferred compensation payment is owed by Ariel Fund to Merkin or Gabriel Capital Corp. and therefore to the extent that Ariel Fund was or remains an investor in Ascot Fund, no payment to Merkin and/or Gabriel Capital Corp. would result from distributions on the Allowed Claim from the Trustee.

7. Release by the Trustee. In consideration of the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, except with respect to the obligations, rights, and considerations arising under this Agreement, upon the Closing and subject to the Terms of Escrow (as defined in paragraph 13), the Trustee on behalf of himself, BLMIS, and its consolidated estates, and all persons, natural or corporate, in privity with any of them hereby releases, acquits, and forever discharges Ascot Partners, as well as Ralph C. Dawson as the appointed Receiver of Ascot Partners, David B. Pitofsky as former Receiver of Ascot Partners, Ascot Fund, Merkin, and Gabriel Capital Corp., each of their respective current and former organizational affiliates, including, but not limited to, parent entities, sister entities, and subsidiary entities, as well as the board members, directors, trustees, officers, partners, general partners, limited partners, members, employees, individual affiliates, family members, attorneys, professionals, agents, assigns, successors, heirs, executors and administrators of each of the foregoing 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, based on, arising out of, or in any way related to BLMIS, including, without limitation, the claims against Ascot Partners, Ascot Fund, Merkin, and Gabriel Capital Corp. in the Adversary Proceeding and any other avoidance claims under Chapter 5 of Title 11 of the United States Code, except for any and all claims to enforce the obligations of Ascot Partners, Ascot Fund, Merkin and/or Gabriel Capital Corp. under this Agreement and the Escrow Agreement (as defined in paragraph 13).

8. Releases by Ascot Partners and Ascot Fund. In consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, except with respect to the obligations, rights, and considerations arising under this Agreement, upon the Closing and subject to the Terms of Escrow (as defined in paragraph 13), Ascot Partners and Ascot Fund hereby release, acquit, and forever discharge the Trustee and all his agents, representatives, attorneys, employees, and professionals, BLMIS and its consolidated estate, and all persons, natural or corporate, in privity with them from any and all past, present, or future claims or causes of action (including any suit, petition, demand, or other claim in law, equity, or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts), of

whatever kind, nature or description, direct or indirect, in law, equity, or arbitration, absolute or contingent, in tort, contract, statutory liability, or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty, or otherwise (including attorneys' fees, costs, or disbursements), known or unknown, existing as of the date of the Closing, based on, arising out of, or in any way related to BLMIS, except for Ascot Partners' and Ascot Funds' rights to enforce the Trustee's obligations under this Agreement and the Escrow Agreement (as defined in paragraph 13). Nothing in this release shall release the right or claim of Ascot Partners or Ascot Fund or their investors to any and all distributions they receive from (i) the forfeiture fund established by the U.S. Department of Justice, (ii) the settlement in the NYAG Action, and (iii) all rights under and distributions due pursuant to the Allowed Claim.

9. Releases by Merkin and Gabriel Capital Corp. In consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, except with respect to the obligations, rights, and considerations arising under this Agreement, upon the Closing and subject to the Terms of Escrow (as defined in paragraph 13), Merkin and Gabriel Capital Corp. hereby release, acquit, and forever discharge the Trustee and all his agents, representatives, attorneys, employees, and professionals, BLMIS and its consolidated estate, and all persons, natural or corporate, in privity with them from any and all past, present, or future claims or causes of action (including any suit, petition, demand, or other claim in law, equity, or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts), of whatever kind, nature or description, direct or indirect, in law, equity, or arbitration, absolute or contingent, in tort, contract, statutory liability, or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty, or otherwise (including attorneys' fees, costs, or disbursements), known or unknown, existing as of the date of the Closing, based on, arising out of, or in any way related to BLMIS, except for Merkin's and Gabriel Capital Corp.'s rights to enforce the Trustee's obligations under this Agreement and the Escrow Agreement (as defined in paragraph 13).

10. Unknown Claims. Unknown Claims shall mean any released claims pursuant to paragraphs 7 through 9 of the Agreement, as defined herein, that the Parties do not know or suspect to exist in their favor at the time of giving the release in this Agreement that if known by them, might have affected their settlement and release in this Agreement. With respect to any and all released claims in paragraphs 7 through 9 of this Agreement, the Parties shall expressly waive or be deemed to have waived the provisions, rights and benefits of California Civil Code section 1542 (to the extent it applies herein), which provides:

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

The Parties expressly waive, and shall be deemed to have waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or

principle of common law or foreign law, that is similar, comparable, or equivalent in effect to California Civil Code section 1542. The Parties may hereafter discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Released Claims, but the Parties shall expressly have and be deemed to have fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, that now exist or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Parties acknowledge and shall be deemed to have acknowledged that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

11. Dismissal of Adversary Proceedings. As soon as practical after the Closing and subject to the Terms of Escrow (as defined in paragraph 13), the Parties shall stipulate to dismissal of the Adversary Proceeding, with prejudice, as appropriate under Fed. R. Civ. Pro. 41(a), with each party bearing its own costs, attorneys' fees, and expenses.

12. Court Approval; Effective Date; Termination. This Agreement is subject to, and shall become effective and binding on the Parties upon, the Bankruptcy Court's approval of this Agreement in the SIPA Proceeding by an order that is no longer subject to appeal, review, or rehearing (the "Effective Date"). The Trustee shall use his best efforts to obtain approval of the Agreement in the SIPA Proceeding as promptly as practicable after the date of this Agreement. If this Agreement has not become effective as provided in this paragraph within 180 days after the date of this Agreement (or within such additional time as mutually agreed upon by the Parties), then (a) this Agreement (other than this paragraph and paragraphs 23 and 24) shall terminate and be void; (b) all of the statements, concessions, consents, and agreements contained in the Agreement (other than this paragraph) shall be void; and (c) neither the Trustee nor Ascot Partners, Ascot Fund, Merkin, or Gabriel Capital Corp. may use or rely on any such statement, concession, consent, or agreement in any public statement or litigation involving the SIPA Proceeding, or any case or proceeding relating to Ascot Partners, Ascot Fund, Merkin, Gabriel Capital Corp., BLMIS, or Madoff.

13. Closing and Terms of Escrow.

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

(b) At the Closing, in order to ensure that the Settlement Payment and the Allowed Claim cannot be avoided as a preference pursuant to 11 U.S.C. § 547(b) of the Bankruptcy Code or otherwise avoided, unwound or recovered under any similar laws relating to the relief from debts or the protection of debtors as to Ascot Partners, the Parties agree that the catch-up distribution from the Allowed Claim (including satisfaction of the Settlement Payment as set forth in Paragraph 2) shall be made to an escrow agent ("Escrow Agent") and pursuant to an escrow agreement ("Escrow Agreement") for a period of ninety (90) days ("Escrow Period"). The Escrow Agent and Escrow Agreement shall be agreed upon by Ascot Partners and the Trustee. The Trustee

shall bear the fees and costs of the Escrow Agent and Escrow Account, which shall be reasonable, pursuant to the Escrow Agreement.

(c) If Ascot Partners has not voluntarily filed for relief or is not subject to a petition for involuntary relief, in each case under the Bankruptcy Code or any similar laws relating to the relief from debts or the protection of debtors as of the ninetieth (90th) day following the Closing, or if Ascot Partners becomes subject to a petition for involuntary relief under the Bankruptcy Code or any other similar laws relating to the relief from debts or the protection of debtors and such petition is dismissed as of the ninetieth (90th) day following the Closing, the Escrow Agent shall deliver the respective payments to the Trustee and to Ascot Partners, and be deemed to have delivered the escrowed releases to the respective beneficiaries thereof contemplated by this Agreement on the ninety-first (91st) day following the Closing without any further action of the Parties. Simultaneously with the payments by the Escrow Agent to the respective beneficiaries, the releases contained in paragraphs 7, 8, and 9 shall become effective without any further action by any of the Parties and without being subject to any further obligations of the Settling Parties under the terms of this Agreement. Simultaneously with the payments by the Escrow Agent to the respective beneficiaries, the Escrow Agreement shall be terminated.

(d) If Ascot Partners has voluntarily filed for relief or is subject to a petition for involuntary relief, in each case under the Bankruptcy Code or any similar laws relating to the relief from debts or the protection of debtors as of the ninetieth (90th) day following the Closing, or if Ascot Partners becomes subject to a petition for involuntary relief under the Bankruptcy Code or any other similar laws relating to the relief from debts or the protection of debtors and such petition is not dismissed as of the ninetieth (90th) day following the Closing, then this Agreement shall terminate and become void, all of the releases, statements, consents, and agreements contained in the Agreement shall become void, the Escrow Agent shall return all sums paid pursuant to the Agreement to the respective Parties entitled thereto in accordance with the Escrow Agreement, the Escrow Agreement shall be terminated, and none of the Parties may use or rely on any such release, statement, consent, or agreement in any public statement or litigation involving the SIPA Proceeding, any case or proceeding relating to the SIPA Proceeding or any case or proceeding relating to BLMIS or Madoff; provided that, the Parties may, by a writing executed by all of them, without the necessity for further notice or hearing before the Court, elect to waive this paragraph and cause the settlement to become effective notwithstanding the occurrence of one or more conditions precedent to termination of this Agreement, or extend the Escrow Period until such time as the petition is adjudicated by a Bankruptcy Court, at which time either paragraph 13(c) or 13(d) will take effect as though it were the ninetieth (90th) day following the Closing.

14. Cooperation and Discovery Obligations. Ascot Partners, Ascot Fund, Merkin, and Gabriel Capital Corp. hereby agree, if requested by the Trustee, to use good faith efforts to reasonably cooperate with the Trustee in his prosecution of claims against other defendants in other adversary proceedings, so long as such cooperation would not, in their reasonable judgment, have an adverse effect on any of the interests of Ascot Partners, Ascot Fund, Merkin,

or Gabriel Capital Corp.. Nothing in this Section shall in any way impair the Trustee's discovery or other rights pursuant to the Bankruptcy Code, Federal Rules of Bankruptcy Procedure or other applicable law. Nothing in this Section shall impair the rights or duties of Ascot Partners, Ascot Fund, Merkin, or Gabriel Capital Corp. under the Bankruptcy Code, Federal Rules of Bankruptcy Procedure or other applicable law to object to such discovery and to provide truthful testimony in any proceeding.

15. The Parties' Authority. The Receiver for Ascot Partners represents and warrants to the Trustee that, as of the date hereof, he has the full power, authority, and legal right to execute and deliver, and to perform his obligations under this Agreement and has taken all necessary action to authorize the execution, delivery, and performance of his obligations under this Agreement. Ascot Fund represents and warrants to the Trustee that, as of the date hereof, it has the full power, authority, and legal right to execute and deliver, and to perform its obligations under this Agreement and has taken all necessary action to authorize the execution, delivery, and performance of its obligations under this Agreement. Merkin and Gabriel Capital Corp. represent and warrant to the Trustee that, as of the date hereof, they have the full power, authority, and legal right to execute and deliver, and to perform their obligations under this Agreement and have taken all necessary action to authorize the execution, delivery, and performance of their obligations under this Agreement. The Trustee represents and warrants to Ascot Partners, Ascot Fund, Merkin, and Gabriel Capital Corp. that, as of the date hereof, and subject to the approval of the Bankruptcy Court as set forth in paragraph 12 above, he has the full power, authority, and legal right to execute and deliver, and to perform his obligations under this Agreement and has taken all necessary action to authorize the execution, delivery, and performance of his respective obligations under this Agreement. Ascot Partners represents and warrants that it owns and controls the Customer Claim as of the date of this Agreement.

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

17. Entire Agreement. Except as to certain representations identified above, this Agreement constitutes the entire agreement and understanding between and among the Parties and supersedes all prior agreements and understandings concerning the subject matter hereof. The representations identified above are incorporated by reference into this agreement and the understanding between and among the Parties.

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

19. Amendments, Waiver. Except with respect to automatic termination and termination rights expressly set forth herein, this Agreement may not be terminated, amended, or modified in any way except in a writing signed by all of the Parties. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof, whether

or not similar, nor shall such waiver constitute a continuing waiver.

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

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

22. No Third Party Beneficiary. Except as expressly provided in paragraph 2 and in the releases contained in paragraphs 7 through 9, 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.

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

24. Exclusive Jurisdiction. The Parties agree that the Bankruptcy Court shall have exclusive jurisdiction over any and all disputes between or among the Parties, whether in law or equity, arising out of or relating to this Agreement, or any provision thereof, and the Parties hereby consent to and submit to the jurisdiction of the Bankruptcy Court, including the power of the Bankruptcy Court to enter final judgment, for any such action. In the event the BLMIS proceeding is closed by a final decree and not reopened, the Parties agree that any dispute arising out of this Agreement, or any provision thereof, may be brought in the United States District Court for the Southern District of New York or the Supreme Court of New York in New York County. Nothing in this paragraph is intended to contradict or abrogate the Stipulation and Order appointing a Receiver for Ascot Partners entered in the NYAG Action on June 30, 2009, as amended by the Order dated May 2, 2013.

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

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

24. 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.

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

If to the Trustee:

Irving H. Picard
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Email: ipicard@bakerlaw.com

With copies to:

David J. Sheehan
Lan Hoang
Brian W. Song
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Email:
dsheehan@bakerlaw.com
lhoang@bakerlaw.com
bsong@bakerlaw.com

If to Ascot Fund Limited:

Judith A. Archer
Norton Rose Fulbright US LLP
1301 Avenue of the Americas
New York, NY 10019-6022
Email: judith.archer@nortonrosefulbright.com

With copies to:

David B. Schwartz
Norton Rose Fulbright US LLP
1301 Avenue of the Americas
New York, New York 10019-6022
Email:
david.schwartz@nortonrosefulbright.com

If to the Receiver and/or Ascot Partners LLP:

Ralph C. Dawson
c/o Norton Rose Fulbright US LLP
1301 Avenue of the Americas
New York, NY 10019-6022
Email: ralph.dawson@nortonrosefulbright.com

With copies to:

Judith A. Archer
David B. Schwartz
Norton Rose Fulbright US LLP
1301 Avenue of the Americas
New York, New York 10019-6022
Email:
judith.archer@nortonrosefulbright.com
david.schwartz@nortonrosefulbright.com

If to J. Ezra Merkin and/or Gabriel Capital Corporation:

Andrew J. Levander
Dechert LLP
1095 Avenue of the Americas
New York, New York 10036
Email: Andrew.levander@dechert.com

With copies to:

Neil A. Steiner
Dechert LLP
1095 Avenue of the Americas
New York, New York 10036
Email: neil.steiner@dechert.com

[Signature pages follow]

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

*Trustee for the Substantively
Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
and the chapter 7 estate of Bernard L. Madoff*



IRVING H. PICARD

Sworn to and subscribed before me
this 11th day of June, 2018



Notary Public

SONYA M. GRAHAM
Notary Public, State of New York
No. 01GR6133214
Qualified in Westchester County
Commission Expires: 9/12/2021

ASCOT PARTNERS LP



RALPH C. DAWSON, RECEIVER

Sworn to and subscribed before me
this 12th day of June, 2018



Notary Public

LYNN PERDUE
Notary Public, State of New York
No. 01PE4853404
Qualified in Suffolk County
Certificate Filed in New York County
Commission Expires Feb. 17, 2022

ASCOT FUND LIMITED


By: DON SEYMOUR, DIRECTOR

Sworn to and subscribed before me
this 11th day of June, 2018



Notary Public

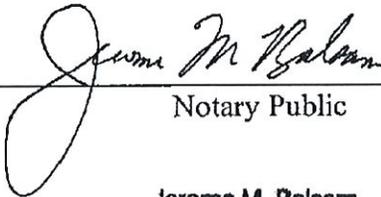
SARAH E. O'CONNELL
Notary Public, State of New York
No. 02OC6138844
Qualified in New York County
Commission Expires March 18, 2018 ²²

J. EZRA MERKIN



J. EZRA MERKIN

Sworn to and subscribed before me
this 11th day of June, 2018



Notary Public

Jerome M. Balsam
Notary Public, State of New York
Qualified in New York County
Lic. #02BA6012363
Commission Expires August 24, 2018

GABRIEL CAPITAL CORPORATION

By: J. Inga Merkin

Sworn to and subscribed before me
this 11th day of June, 2018

Jerome M Balsam
Notary Public

Jerome M. Balsam
Notary Public, State of New York
Qualified in New York County
Lic. #02BA6012363
Commission Expires August 24, 2018

EXHIBIT B

**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.

J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,
ASCOT FUND LTD., GABRIEL CAPITAL
CORPORATION,

Defendants.

Adv. Pro. No. 09-01182 (SMB)

**[PROPOSED] ORDER PURSUANT TO SECTION 105(a)
OF THE BANKRUPTCY CODE AND RULES 2002 AND 9019 OF THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE APPROVING SETTLEMENT
AGREEMENT BETWEEN THE TRUSTEE AND ASCOT PARTNERS, L.P.,
THROUGH ITS RECEIVER, RALPH C. DAWSON, ASCOT FUND LIMITED,
J. EZRA MERKIN, AND GABRIEL CAPITAL CORPORATION**

Upon the motion (the “Motion”)¹ of Irving H. Picard (the “Trustee”), as trustee for the
substantively consolidated liquidation of Bernard L. Madoff Investment Securities

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

LLC("BLMIS") and the estate of Bernard L. Madoff, seeking entry of an order, pursuant to section 105(a) of title 11, United States Code, 11 U.S.C. §§ 101 *et seq.* and Rules 2002(a)(3) and 9019(a) of the Federal Rules of Bankruptcy Procedure, approving the Settlement Agreement dated June 2, 2018, by and between the Trustee, on the one hand, and Ascot Partners, L.P., through its Receiver, Ralph C. Dawson, Ascot Fund Limited, J. Ezra Merkin, and Gabriel Capital Corporation (collectively, "Defendants"), on the other hand; and it appearing that due and sufficient notice has been given to all parties in interest as required by Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure; and the Court having considered the Affidavit of Irving H. Picard in support of the Motion; and a hearing having been held on the Motion on July 10, 2018 at 2:00 p.m. (the "Hearing"); 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 **IT IS HEREBY:**

ORDERED, that the Motion is granted to the extent set forth in this Order; and it is further

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

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

Dated: July ___, 2018
New York, New York

HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

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

Plaintiff,

v.

J. EZRA MERKIN, GABRIEL CAPITAL, L.P.,
ARIEL FUND LTD., ASCOT PARTNERS, L.P.,
GABRIEL CAPITAL CORPORATION, ASCOT
FUND

Defendants.

Adv. Pro. No. 09-01182 (SMB)

**AFFIDAVIT OF IRVING H. PICARD, TRUSTEE, IN SUPPORT OF MOTION
FOR ENTRY OF ORDER PURSUANT TO SECTION 105(a) OF THE
BANKRUPTCY CODE AND RULES 2002 AND 9019 OF THE FEDERAL RULES
OF BANKRUPTCY PROCEDURE APPROVING SETTLEMENT AGREEMENT
BETWEEN THE TRUSTEE AND ASCOT PARTNERS, L.P., THROUGH ITS
RECEIVER, RALPH C. DAWSON, ASCOT FUND LIMITED,
J. EZRA MERKIN, AND GABRIEL CAPITAL CORPORATION**

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

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

1. I am the trustee for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.* (“SIPA”) and the substantively consolidated chapter 7 estate of Bernard L. Madoff (“Madoff,” and together with BLMIS, the “Debtor”). I am familiar with the affairs of the Debtor. I respectfully submit this Affidavit in support of the motion (the “Motion”) seeking entry of an order, pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, approving a settlement agreement (the “Agreement”) by and between the Trustee, on the one hand, and Ascot Partners, L.P. (“Ascot Partners,”) through its Receiver, Ralph C. Dawson, Ascot Fund Limited (“Ascot Fund”), J. Ezra Merkin (“Merkin”), and Gabriel Capital Corporation (“Gabriel Capital Corp.”), on the other hand.¹

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

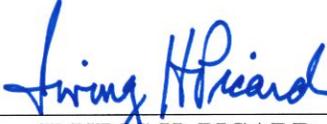
3. All capitalized terms not defined herein have the meaning ascribed to them in the Motion and Agreement.

4. For reasons noted in this paragraph and 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 furthers the interest of BLMIS customers by immediately recovering for the benefit of the customer fund the amount of 100%

¹ Ascot Partners, Ascot Fund, Merkin and GCC are collectively referred herein as the “Defendants.” The Defendants together with the Trustee are hereinafter the “Parties.”

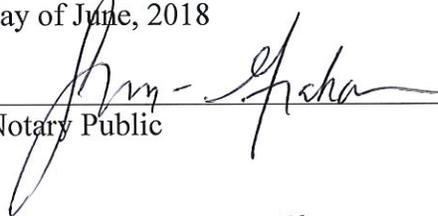
of the fraudulent Two-Year Transfers aggregating two-hundred eighty million dollars (\$280,000,000.00) sought from Ascot Partners. The Trustee will allow the Ascot Partners Customer Claim to the extent of Ascot Partners' net equity, plus 95% of the amount of the Settlement Payment. The settlement will provide immediate monies to Ascot Partners for distribution to its investors. The Agreement also resolves all issues regarding the asserted and unasserted claims against Ascot Partners without the need for protracted, costly, and uncertain litigation.

5. Given the potential complexities involved in proceeding with further litigation, I have determined, in my business judgment, that the Agreement represents a fair compromise of the claims against the Defendants.



IRVING H. PICARD

Sworn to before me this 11th
day of June, 2018



Notary Public

SONYA M. GRAHAM
Notary Public, State of New York
No. 01GR6133214
Qualified in Westchester County
Commission Expires: 9/12/2021