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Hearing Date: September 22, 2011 at 10:00 a.m.
Objection Deadline: September 6, 2011

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Debtor.	SIPA LIQUIDATION No. 08-01789 (BRL) (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. TREMONT GROUP HOLDINGS, INC.; TREMONT PARTNERS, INC.; TREMONT (BERMUDA) LIMITED; RYE SELECT BROAD MARKET FUND, L.P.; RYE SELECT BROAD MARKET PRIME FUND, L.P.; RYE SELECT BROAD MARKET PORTFOLIO LIMITED; RYE	Adv. Pro. No. 10-05310 (BRL)

SELECT BROAD MARKET INSURANCE PORTFOLIO, LDC; RYE SELECT BROAD MARKET INSURANCE FUND, L.P.; RYE SELECT BROAD MARKET XL FUND, L.P.; RYE SELECT BROAD MARKET XL PORTFOLIO LIMITED; TREMONT ARBITRAGE FUND, L.P.; TREMONT ARBITRAGE FUND IRELAND; TREMONT EMERGING MARKETS FUND – IRELAND; TREMONT EQUITY FUND – IRELAND; TREMONT INTERNATIONAL INSURANCE FUND, L.P.; TREMONT LONG/SHORT EQUITY FUND, L.P.; TREMONT MARKET NEUTRAL FUND, L.P.; TREMONT MARKET NEUTRAL FUND II, L.P.; TREMONT MARKET NEUTRAL FUND LIMITED; TREMONT OPPORTUNITY FUND LIMITED; TREMONT OPPORTUNITY FUND II, L.P.; TREMONT OPPORTUNITY FUND III, L.P.; RYE SELECT EQUITIES FUND; TREMONT MULTI MANAGER FUND; LIFEINVEST OPPORTUNITY FUND LDC; OPPENHEIMER ACQUISITION CORP.; MASSMUTUAL HOLDING LLC; MASSACHUSETTS MUTUAL LIFE INSURANCE CO.; SANDRA L. MANZKE AND ROBERT I. SCHULMAN,

Defendants.

TRUSTEE IRVING H. PICARD'S RESPONSE TO THE OBJECTIONS TO THE SETTLEMENT BETWEEN THE TRUSTEE AND TREMONT GROUP HOLDINGS, INC., TREMONT PARTNERS, INC. , TREMONT (BERMUDA) LIMITED, RYE SELECT BROAD MARKET FUND, L.P., RYE SELECT BROAD MARKET PRIME FUND, L.P., RYE SELECT BROAD MARKET PORTFOLIO LIMITED, RYE SELECT BROAD MARKET INSURANCE FUND, L.P., RYE SELECT BROAD MARKET XL FUND, L.P. , TREMONT ARBITRAGE FUND, L.P., TREMONT ARBITRAGE FUND IRELAND, TREMONT EMERGING MARKETS FUND – IRELAND, TREMONT EQUITY FUND – IRELAND, TREMONT INTERNATIONAL INSURANCE FUND, L.P., TREMONT LONG/SHORT EQUITY FUND, L.P., TREMONT MARKET NEUTRAL FUND, L.P., TREMONT MARKET NEUTRAL FUND II, L.P., TREMONT MARKET NEUTRAL FUND LIMITED, TREMONT OPPORTUNITY FUND LIMITED, TREMONT OPPORTUNITY FUND II, L.P., TREMONT OPPORTUNITY FUND III, L.P., RYE SELECT EQUITIES FUND, TREMONT MULTIMANAGER FUND, AND LIFEINVEST OPPORTUNITY FUND LDC, OPPENHEIMER ACQUISITION CORP., MASSMUTUAL HOLDING LLC, MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, ROBERT I. SCHULMAN, AND RYE SELECT BROAD MARKET INSURANCE PORTFOLIO LDC

Irving H. Picard (the "Trustee"), in his capacity as trustee for the liquidation under the Securities Investor Protection Act of 1970, 15 U.S.C. §§ 78aaa *et seq.*, as amended ("SIPA"), of Bernard L. Madoff Investment Securities LLC ("BLMIS") and the substantively consolidated Chapter 7 case of Bernard L. Madoff ("Madoff"), by and through his undersigned counsel, hereby responds to the objections made to the motion ("Motion") for the 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(a)(3) and 9019(a) of the Federal Rules of the Bankruptcy Procedure (the "Bankruptcy Rules"), approving an agreement (the "Settlement Agreement") by and between the Trustee and Tremont Group Holdings, Inc. ("Tremont Group"); Tremont Partners, Inc. ("Tremont Partners"); Tremont (Bermuda) Limited ("Tremont Bermuda"); Rye Select Broad Market Fund, L.P. ("Broad Market Fund"), Rye Select Broad Market Prime Fund, L.P. ("Prime Fund"), Rye Select Broad Market Portfolio Limited ("Portfolio limited") (Broad Market Fund, Prime Fund, and Portfolio Limited collectively shall be referred to herein as the "Rye Funds"); Rye Select Broad Market Insurance Fund, L.P. ("Rye Insurance"); Rye Select Broad Market XL Fund, L.P. ("XL LP"); Tremont Arbitrage Fund, L.P., Tremont Arbitrage Fund Ireland, Tremont Emerging Markets Fund – Ireland, Tremont Equity Fund – Ireland, Tremont International Insurance Fund, L.P., Tremont Long/Short Equity Fund, L.P., Tremont Market Neutral Fund, L.P., Tremont Market Neutral Fund II, L.P., Tremont Market Neutral Fund Limited, Tremont Opportunity Fund Limited, Tremont Opportunity Fund II, L.P., Tremont Opportunity Fund III, L.P., Rye Select Equities Fund, Tremont Multimanager Fund, and LifeInvest Opportunity Fund LDC (the foregoing entities not otherwise defined collectively shall be referred to herein as the "Tremont Funds"); Oppenheimer Acquisition Corp. ("Oppenheimer"); MassMutual Holding LLC ("MassMutual Holding"); Massachusetts Mutual Life Insurance Company ("MassMutual") (Oppenheimer, MassMutual Holding, and MassMutual

collectively shall be referred to herein as the "Parent Defendants"); Robert I. Schulman ("Schulman") (Tremont Group, Tremont Partners, Tremont Bermuda, the Rye Funds, Rye Insurance, XL LP, the Tremont Funds, and Schulman shall be referred to herein as the "Tremont Defendants"); and Rye Select Broad Market Insurance Portfolio LDC ("Insurance Portfolio LDC")[1] (collectively, the "Settling Defendants").

PRELIMINARY STATEMENT

After service of the Motion on more than 16,000 interested parties in this action, only two objections to the Motion were filed with the Court, one of which is only a limited objection. Both of the objections were filed by non-BLMIS customers who are investors in funds that are among the Settling Defendants herein. These objections have no merit and should not prevent the approval of a Settlement Agreement that will bring an additional $1.025 billion[2] in cash to the Fund of Customer Property. Significantly, no objections were filed by any BLMIS customers or defendants in the within adversary proceeding.

The first objection, which is only a limited objection, is made by a handful of insurance companies, including John Hancock Life Insurance Company (U.S.A.), Nationwide Life Insurance Company, New York Life Insurance & Annuity Corporation, Pacific Life Insurance Company, Pruco Life Insurance Company, Security Life of Denver Insurance Company, and Sun Life Assurance Company of Canada (U.S.) (collectively the "Carriers"). The Carriers are purportedly investors in Tremont Opportunity Fund III ("Opportunity III"), one of the defendant

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

[2] Neither objection makes any reference to the additional $25 million to be paid by Insurance Portfolio LDC, whose customer claim also will be recognized under the Settlement Agreement. The total cash component of this settlement is therefore $1.025 billion, as opposed to the $1 billion referenced in the objections.

Tremont Funds and an alleged subsequent transferee of customer property. The second objection—and the only objection that seeks to deny approval of the settlement—is made by Phoenix Lake Partners, Inc., Lakeview Investment, LP, 2005 Tomchin Family Charitable Trust, Edward White (for himself and on behalf of White Trust dated May 3, 2002), and Rigdon O. Dees, III (collectively, the "XL LP/Prime Investors"). The XL/Prime Investors are purportedly investors in defendant Prime Fund (a direct BLMIS customer) and/or defendant XL LP (an indirect investor alleged to have received subsequent transfers).

First, the Carriers seek clarification of the Settlement Agreement regarding whether a revised customer claim calculation would apply to all of the Rye Funds, including the Prime Fund, if the Second Circuit's opinion regarding net equity were to be overturned. Such an inquiry seeking a speculative interpretation of specific terms of the Settlement Agreement is inappropriate and not an adequate basis upon which to object. In addition, the Second Circuit has upheld the Trustee's calculation of net equity, so no clarification is necessary at this time.

Next, both objections take issue with the Settlement Agreement's increase of $800 million in the allowed claims of the Broad Market Fund and Portfolio Limited under 11 U.S.C. § 502(h). Both objections contend that the Prime Fund, whose customer claim was denied because it is a "net winner," should also receive a share of the $800 million credit. These objections should be summarily rejected because the Prime Fund withdrew over $210 million more than it invested with BLMIS. A customer who profited from the Ponzi scheme has no basis upon which to share in another customer's claim.

The XL LP/Prime Investors also argue that the Settlement Agreement is not "fair or equitable" due to the Settlement Agreement's release of certain alleged subsequent transferees who are allegedly not contributing payment toward the settlement, as well as a purported

extinguishment of claims against subsequent transferees not settling herein. These objections are improper, legally incorrect, and ignore the standard required for settlement approval. The Settlement Agreement will allow the estate to recover $1.025 billion in cash collectively from the Settling Defendants, while also preserving Trustee's rights to seek recovery from non-settling subsequent transferees. This is not the proper forum to argue against the Tremont Defendants' internal allocation determinations, which have no bearing on the Settlement Agreement's benefit to the BLMIS estate and its customers. Moreover, the XL/Prime Investors are simply wrong that the Trustee is extinguishing claims against others by entering into this settlement. Under section 550(d), the Trustee may settle the claims asserted against the Settling Defendants herein and continue with his claims against subsequent transferees not a part of the Settlement Agreement.

Contrary to the allegations of the XL/Prime Investors, the Settlement Agreement will greatly benefit BLMIS customers and does far more than meet the "lowest point within the range of reasonableness," which is the test to be applied for determining settlement approval in this Circuit. Indeed, the Fund of Customer Property will be benefitted by $1.025 billion in cash without the necessity of engaging in lengthy, complex litigation against the Settling Defendants.

THE CARRIERS' LIMITED OBJECTION

1. The Carriers purport to be limited partners of Opportunity III, a defendant in this action alleged to have received subsequent transfers from two of the Rye Funds—the Broad Market Fund and Prime Fund—which are BLMIS customers. The Carriers first seek a point of clarification regarding the calculation of net equity, requesting that the Prime Fund's customer claim be treated the same as other claims should the Trustee's net equity calculation be overturned. (Carrier Mem., at ¶¶ 7-11, 17-23.) The Carriers then make a limited objection, arguing the Settlement Agreement unfairly allocates the Tremont Defendants' credit of $800

million under 11 U.S.C. § 502(h) between only two of the settling Rye Funds that will have allowed customer claims—Broad Market Fund and Portfolio Limited. The Carriers request that the Settlement Agreement be modified so that Prime Fund may also share in that $800 million credit. (Carrier Mem., at ¶¶ 12-16, 24-27.)

2. Initially, it must be noted that the Carriers are not, and never were, BLMIS customers. Their inquiries regarding the distribution of customer claims are not related to the benefits of the Settlement Agreement to the BLMIS estate or its customers, but rather pertain to the distribution of accepted customer claims amongst the Tremont Defendants. As limited partners in Opportunity III, any objections they might have to the customer claims distributions ultimately made to investors by the Broad Market Fund and Portfolio Limited would be more appropriately made in the class action proceedings in the consolidated *In re Tremont Securities Law, State Law and Insurance Litigation*, Case No. 08-11117 (TPG), pending in the Southern District of New York. The Honorable Thomas P. Griesa is overseeing that consolidated class action, which includes an approved settlement.

3. The Carriers' request for clarification regarding the calculation of net equity, which does not appear to be an objection to the Settlement Agreement, is improper and requires speculation as to a potential interpretation of the Settlement Agreement. In determining whether to approve a compromise, a bankruptcy court should not decide numerous questions of law and fact raised by the compromise; rather, a bankruptcy court should "canvass the issues and see whether the settlement 'fall[s] below the lowest point in the range of reasonableness.'" *Liu v. Silverman (In re Liu),* 1998 U.S. App. LEXIS 31698, at *3 (2d Cir. Dec. 18, 1998) (quoting *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983)); *see also Masonic Hall & Asylum Fund v. Official Comm. Of Unsecured Creditors (In re Refco, Inc.),* 2006 U.S. Dist. LEXIS 85691, at

*21-22 (S.D.N.Y. Nov. 16, 2006); *In re Ionosphere Clubs*, 156 B.R. 414, 426 (S.D.N.Y. 1993); *In re Purified Down Prods. Corp*., 150 B.R. 519, 522 (S.D.N.Y. 1993) ("[T]he court need not conduct a 'mini-trial' to determine the merits of the underlying litigation"); *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). *See also* Tr. Mem. in Support of Settlement, at ¶¶ 21-24.

4. It is thus inappropriate at this time to provide "clarification" on a purported ambiguity of a Settlement Agreement negotiated at arm's length between the Trustee and the Settling Defendants. Any clarification at this stage would require an improper interpretation of facts and law raised by the Settlement Agreement, as opposed to determining whether the compromise falls within the lowest point in the range of reasonableness, which it clearly does. Nevertheless, no clarification is required, as the Second Circuit has upheld the Trustee's net equity calculation method and the Prime Fund is a net winner by more than $210 million. The Prime Fund's claim was properly rejected and it filed no objection to that determination. Those are the circumstances upon which the parties relied in entering into the Settlement Agreement, and they have not changed.

5. The fact that the Prime Fund is a net winner leads to the Carrier's limited objection, which requests that the Prime Fund be allowed a proportionate share of the $800 million additional claim allocated under 11 U.S.C. § 502(h) to only two of the Tremont Defendants. (Carrier Mem. at 12, ¶ 27.) The Carriers argue that because their fund will contribute toward payment of the $1 billion in cash being paid in total by the Tremont Defendants, they should share in this springing claim.[3] (Carrier Mem. at 12-13, ¶¶ 26-27.)

[3] For reasons that are unclear, the Carriers make no mention of Opportunity III investments in the Broad Market Fund or Rye Insurance. Opportunity III could potentially stand to benefit from the customer

continued on the following page…

6. The Carriers' contention that the Prime Fund should share in the credit under section 502(h) is unsupportable in light of the Prime Fund's status as a net winner. Indeed, the two funds that they contend are sharing in that additional credit—the Broad Market Fund and Portfolio Limited—are net losers by a combined amount of over $2 billion. Their customer claims will therefore be recognized as a part of the Settlement Agreement, along with a credit of an additional $800 million pursuant to section 502(h). On the other hand, the Prime Fund withdrew over $210 million more than it invested with BLMIS, which does not make it eligible for a recognized customer claim despite any contribution it may be providing toward the settlement.[4]

7. Regardless of the Prime Fund's status as a net winner, it is not the Trustee's responsibility to determine the distribution of the $800 million being added to the claims of the Broad Market Fund and Portfolio Limited. As mentioned above, Judge Griesa is overseeing a settlement in the *In re Tremont* consolidated action in the Southern District of New York. Any issues with the distribution of payments to the investors of the Rye Funds should be raised in that proceeding. This is not the proper forum in which to raise an issue that does not affect the BLMIS estate or its customers, but rather is purely internal to the Tremont Defendants and their investors.

…continued from the preceding page
claims of the Broad Market Fund and/or Rye Insurance if it was an investor in those funds on December 11, 2008. Nevertheless, the Trustee cannot speculate as to the distributions to be made by the Broad Market Fund or Rye Insurance amongst its own investors, as that is the responsibility of the Tremont Defendants.

[4] The Carriers drop a footnote stating that whether a Settling Defendant is a "net winner" or "net loser" should not matter for purposes of section 502(h). (Carrier Mem., at 11 n.3.) Such a contention has no support and belies the purpose of section 502(h), which refers only to allowed claims. Under the net equity determination made by the Trustee and upheld by the Second Circuit, "net winners" are not entitled to an allowed claim.

THE XL/PRIME INVESTOR OBJECTION

8. The XL/Prime Investors, who purport to be limited partners in the Prime Fund and XL LP, have filed the *sole* objection seeking to deny approval of the Settlement Agreement. As noted above, the Prime Fund is a BLMIS customer that withdrew over $210 million more than it invested with BLMIS. XL LP is not a direct BLMIS customer. Rather, XL LP sought to provide its investors with a leveraged exposure to the economic performance of the Broad Market Fund, obtaining this return through synthetic investments in the Broad Market Fund through swap transactions with financial institutions. The Trustee, therefore, named XL LP in the Complaint as a subsequent transferee. XL LP did not file a customer claim and is not eligible for one.

9. The XL/Prime Investors, who all are plaintiffs in their own civil actions against a number of the Tremont Defendants, object to the settlement on three grounds. First, like the Carriers, they object to the allocation of $800 million in credits under 11 U.S.C. § 502(h). (XL/Prime Investor Mem., at 13-15.) Second, they object to the allocation of the $1 billion payment to the Trustee among the various Tremont Defendants. The XL/Prime Investors contend that subsequent transferee defendants, including Tremont Group, its parents and subsidiaries, and CEO Robert Schulman, should contribute to the cash payment being made to the Trustee. (XL/Prime Investor Mem., at 16-17.) Third, the XL/Prime Investors contend that the settlement will extinguish claims against subsequent transferees that are not a part of this settlement even though the settlement agreement specifically reserves such claims. (XL/Prime

Investor Mem., at 17-19.) None of these contentions should prevent the approval of the Settlement Agreement.

10. Like the Carriers, the XL/Prime Investors are not, and never were, BLMIS customers and their objections mostly pertain to internal decisions made by the Tremont Defendants. Any objections they might have would therefore be more appropriate in the class action proceedings before Judge Griesa. In fact, the XL/Prime Investors filed various objections to the settlement that was ultimately approved in those proceedings. (*See In re Tremont Securities Law, State Law and Insurance Litigation*, S.D.N.Y., Case No. 08-11117 (TPG), Dkts. 489-91, 495, 534-35, 538-40, 562-65, 576-77, 581, 587-92.) The XL/Prime Investors should not be permitted to re-litigate issues that are purely internal to the Tremont Defendants and that have no relevance to the BLMIS estate or its many customers who will benefit from approval of this Settlement Agreement.

11. Nevertheless, the XL/Prime Investors' objections should be rejected. Although they state multiple times that the Settlement Agreement is "unfair and inequitable," the XL/Prime Investors make no claim that the Settlement Agreement does not fall below the "lowest point within the range of reasonableness," the applicable standard here. Nor do the XL/Prime Investors analyze the probability of success in the litigation, the difficulties associated with collection, the complexity of the litigation and attendant expense and delay, or—most importantly—the paramount interests of the creditors. *See In re Refco*, 2006 U.S. LEXIS 85691, at *22; *Nellis v. Shugrue*, 165 B.R. 115, 122 (S.D.N.Y. 1994) (citing *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285, 292 (2d Cir. 1992), *cert. denied*, 506 U.S. 1088 (1993)). After two years of investigating the Settling Defendants and considering the relevant law, the Trustee has determined that these factors weigh in favor of the settlement that has been reached.

Significantly, the XL/Prime Investors do not contest the Trustee's assertions regarding the value that the Settlement Agreement provides to the BLMIS estate.

12. The XL/Prime Investors' specific arguments as to why the Settlement Agreement is "unfair and inequitable" also fail. First, like the Carriers, the XL/Prime Investors contend that the Prime Fund should share in the section 502(h) credit. As noted above, that fund was a net winner by over $210 million and should not be eligible for a credit under section 502(h). The Prime Fund's purported $34.5 million contribution to the settlement, (XL/Prime Investors Mem., at 15), does not entitle the Prime Fund to share in the customer claim of another fund under section 502(h).

13. The XL/Prime Investors also baldly contend that XL LP should be entitled to a credit under section 502(h). XL LP, however, is not a BLMIS customer and is therefore not eligible for a credit under section 502(h). In fact, XL LP did not even file a customer claim. XL LP is thus not entitled to a section 502(h) credit from the Trustee for a customer claim that it does not (and could not) have.

14. The XL/Prime Investors' suggested distribution chart labeled as "Table 2"—which includes Prime Fund and XL LP—has no applicability. Depending on XL LP's relationship with the Broad Market Fund, however, XL LP may still benefit from the allowance of the Broad Market Fund's customer claim and its credit under section 502(h). Of course, that is an issue between XL LP and the Broad Market Fund, not an issue that should concern the Trustee or other BLMIS customers who will benefit from the $1.025 billion aggregate payment made by the Settling Defendants.

15. The XL/Prime Investors' contention that the Trustee's Motion should be denied because some subsequent transferees—including Tremont Group, its former CEO, and its parent

corporations and subsidiaries—are not contributing toward the settlement is a red herring and also falls far short of the "lowest point of reasonableness" standard. The BLMIS estate and its customers are receiving $1 billion in cash from all Tremont Defendants in the aggregate, including both initial and subsequent transferees. The XL/Prime Investors do not indicate why that amount is not enough. The Settlement Agreement does not specify which specific Tremont Defendants will make payment, as that decision is for the determination of the Tremont Defendants. Whether initial transferees or subsequent transferees contribute to the within settlement does not affect the Settlement Agreement's benefit to the BLMIS estate and its customers. The Settlement Agreement, however, does include a provision to protect the funds and their investors by ensuring that Tremont Group, its former CEO, and its parent corporations and subsidiaries will *not* profit from any distribution made by the Trustee on the Rye Funds' customer claims. (Settlement Agreement, ¶ 7.)

16. The Settlement Agreement does nothing to preclude the XL/Prime Investors from seeking redress from the management and parents of the Tremont Defendants in another forum. The XL/Prime Investors are free to continue pursuing their own actions for damages against those entities.

17. Finally, the XL/Prime Investors argue—without legal support—that the Settlement Agreement "extinguishes the trustee's claims against subsequent transferees because the trustee 'is entitled to only a single satisfaction.'" (XL/Prime Investors Mem., at 18) (citing 11 U.S.C. § 550(d)). According to this objection, the Trustee's claims against HSBC, ABN/Royal Bank of Scotland, and Fortis Bank for subsequent transfers received from the Rye Funds will be extinguished based on this settlement. This is a misinterpretation of the law, however, and the settlement will actually benefit the Trustee in proceeding against those entities.

18. While 11 U.S.C. § 550(d) allows the Trustee to recover "only a single satisfaction" of a preferential and/or fraudulent conveyance claim, the statute expressly allows recovery from "*any* immediate or mediate transferee of such initial transferee," in order to achieve a full satisfaction of those claims. *See* 11 U.S.C. § 550 (a)(2) (emphasis added). Where, as here, the entirety of the Trustee's claims against the Settling Defendants will not be satisfied pursuant to the terms of the Settlement Agreement, the Trustee may seek the difference between the amounts paid under the agreement and the full value of the fraudulent conveyances claims from any transferee identified in sections 550(a)(1) and 550(a)(2), without running afoul of section 550(d)'s single recovery rule. *See*, e.g., 5 Collier on Bankruptcy, ¶550.02[4] at 550-14 [16th Ed. 2010] ("the trustee can recover from any combination of [transferees] subject to the limitation of single satisfaction"). Indeed, as recognized by the Ninth Circuit Court of Appeals, "trustees would have little incentive to partially settle avoidance actions" if one settlement foreclosed other recoveries. *In re AVI, Inc.*¸ 389 B.R. 721, 735 (9th Cir. B.A.P. 2008).

19. Further, the Settlement Agreement expressly and unambiguously preserves the Trustee's rights to pursue subsequent transferees in accordance with section 550(a)(2) of the Bankruptcy Code. (*See* Settlement Agreement, ¶ 4 and Exh. A.) Accordingly, the XL/Prime Investors' assertion that the Trustee is extinguishing his rights against non-settling defendants in other adversary proceedings is contradicted by both the law and facts.

VALUE OF THE SETTLEMENT TO BLMIS CUSTOMERS

20. The Settlement Agreement provides the BLMIS estate tremendous short-term and long-term value, including but not limited to $1.025 billion in cash and a reduction to the Insurance Portfolio LDC customer claim by $10 million. The effect of this settlement is to increase the ultimate distributions to BLMIS customers with valid claims and to create additional

certainty for the Fund of Customer Property. In addition, this Settlement Agreement is beneficial to investors in the Broad Market Fund, Portfolio Limited, Insurance Portfolio LDC, and Rye Insurance—all of which will have their claims recognized and will participate in distributions made to BLMIS customers.

21. The limited objection made by the Carriers and the objection made by XL/Prime Investors do not take into consideration the many benefits of the Settlement Agreement to the BLMIS estate or to the Tremont Defendants. It is clear their motives—particularly those of the XL/Prime Investors—are designed to unfairly provide themselves and their counsel with a "slice of the pie" at the direct expense of other limited partners in the various Rye Funds and Tremont Funds, as well as BLMIS customers. Far from being "unfair and inequitable," the Settlement Agreement provides a fair and reasonable resolution to complicated litigation, and provides value to all Settling Defendants they would not have otherwise received. Most notably, the substantial customer claims of the Broad Market Fund, Portfolio Limited, Rye Insurance, and Insurance Portfolio LDC—which are all net losers with many underlying investors—will be accepted.

22. By contrast, a denial of the Settlement Agreement will push all parties involved back into litigation. This would undoubtedly delay the Trustee's receipt of any recovery from the Settling Defendants and cause substantial injury to the BLMIS estate. The cavalier suggestion by non-BLMIS customers that the settlement should be denied is simply wrong. The public interest is undoubtedly best served by not countenancing and rejecting what in the final analysis are frivolous objections. The Settlement Agreement no doubt meets the "lowest point within the range of reasonableness" requirement, and in fact achieves far more for BLMIS customers and the estate.

For all of the above reasons, and those set forth in the Trustee's Motion in Support of an Order Approving the Settlement Agreement Under the Bankruptcy Court and the Bankruptcy Rules, an order granting the Motion approving the Settlement Agreement should be entered by this Court.

Dated: New York, New York
September 15, 2011

Respectfully Submitted,

s/ David J. Sheehan

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