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Hearing Date: February 4, 2014, 10:00 a.m. (EST)
Objection Deadline: January 28, 2014, 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 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 Substantively
Consolidated SIPA Liquidation of Bernard L.
Madoff Investment Securities LLC and Bernard L.
Madoff,

Plaintiff,

v.

JPMORGAN CHASE CO., JPMORGAN CHASE
BANK, N.A., J.P. MORGAN SECURITIES LLC,
and J.P. MORGAN SECURITIES LTD.,

Defendants.

No. 08-01789 (BRL)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 10-4932 (BRL)

**TRUSTEE'S 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 OF AVOIDANCE
CLAIMS BY AND BETWEEN THE TRUSTEE AND JPMORGAN**

TO: THE HONORABLE BURTON R. LIFLAND,
UNITED STATES BANKRUPTCY JUDGE

Irving H. Picard (the "Trustee"), as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") and the estate of Bernard L. Madoff ("Madoff," and together with BLMIS, the "Debtors"), by and through the Trustee's undersigned counsel, submits this motion and memorandum (the "Motion") seeking entry of an order, pursuant to section 105(a) of title 11, United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") and Rules 2002(a)(3) and 9019(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), approving a settlement ("Settlement"), the terms and conditions of which are set forth in the Settlement Agreement (the "Agreement")¹ dated January 6, 2014 by and among the Trustee and JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC, and J.P. Morgan Securities Ltd. (collectively, "JPMorgan" or "Defendants") (each of the Trustee and each of the Defendants a "Party" and collectively, the "Parties"). In support of the Motion, the Trustee respectfully represents as follows:

PRELIMINARY STATEMENT

1. By entering into this Settlement, the Trustee resolves his Avoidance Claims (as defined in paragraph 9 below) against JPMorgan, avoiding years of costly litigation with an uncertain outcome and an associated delay in distributions from the fund of customer property.

¹ The Agreement is annexed hereto as Exhibit A. To the extent there is any discrepancy between this Motion and the Agreement, the Agreement controls. Capitalized terms not defined herein shall have the meaning set forth in the Agreement.

This Settlement is pivotal to the Trustee's ability to make a timely fourth distribution to BLMIS customers with allowed claims.

2. In addition, a separate but related settlement (the "Class Settlement") was reached simultaneously among the Trustee, JPMorgan, and representatives of a putative class action (the "Class Representatives") on the Common Law Claims (as defined in paragraph 9 below) asserted by the Trustee and the Class Representatives relating to the BLMIS fraud.

3. JPMorgan has agreed to settle the Trustee's Avoidance Claims in the amount of \$325 million (the "Avoidance Settlement Amount"). When the Avoidance Settlement Amount is combined with the related settlement of the Common Law Claims in the Class Settlement and the settlement of the Government's investigation, approximately \$2.243 billion will flow to "net loser" victims of Madoff's fraud.

4. The Agreement represents a good faith, complete, and final Settlement between the Trustee and JPMorgan as to the Avoidance Claims on the terms and conditions as set forth in the Agreement. Resolution of the Trustee's Common Law Claims is provided for in a separate agreement. For all of the reasons in this Motion, the Trustee believes that the Agreement is fair and in the best interests of the BLMIS customer fund and the Estate.

BACKGROUND AND RELEVANT PROCEDURAL HISTORY

5. On December 11, 2008 (the "Filing Date"), the Securities & Exchange Commission ("SEC") filed a complaint in the United States District Court for the Southern District of New York (the "District Court") against the Debtors (Case No. 08 CV 10791). The complaint alleged that the Debtors engaged in fraud through the investment advisor activities of BLMIS.

6. On December 15, 2008, pursuant to section 78eee(a)(4)(A) of SIPA, the SEC consented to a combination of its own action with an application of the Securities Investor

Protection Corporation (“SIPC”). Thereafter, pursuant to section 78eee(a)(3) of SIPA, SIPC filed an application in the District Court alleging, *inter alia*, that BLMIS was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protection afforded by SIPA.

7. On that date, 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 section 78eee(b)(3) of SIPA;
- (ii) appointed Baker & Hostetler LLP as counsel to the Trustee pursuant to section 78eee(b)(3) of SIPA; and
- (iii) removed the case to the United States Bankruptcy Court (“Bankruptcy Court”) pursuant to section 78eee(b)(4) of SIPA.

8. On April 13, 2009, an involuntary bankruptcy petition was filed against Madoff. On June 9, 2009, the Bankruptcy Court entered an order substantively consolidating the chapter 7 estate of Madoff into BLMIS’s estate in the SIPA liquidation proceeding (the consolidated Madoff and BLMIS estates collectively are referred to as the “Estate”).

9. On December 2, 2010, the Trustee filed a complaint (the “Complaint”) commencing an adversary proceeding captioned *Picard v. JPMorgan Chase & Co, et al.*, No. 10-4932 (BRL) (the “JPMorgan Adversary Proceeding”) against JPMorgan seeking to avoid and recover under 11 U.S.C. §§ 544(b), 547, 548 and 550 and the New York Uniform Fraudulent Conveyance Act (New York Debtor and Creditor Law §§ 270-281) (collectively, the “Avoidance Claims”) approximately \$425 million of transfers or other payments (the “Transfers”) received by JPMorgan prior to the collapse of BLMIS, along with interest. The Trustee also asserted claims for aiding and abetting fraud, aiding and abetting breach of fiduciary duty, conversion, unjust enrichment, and contribution against JPMorgan (the “Common Law Claims”).

10. On February 8, 2011, JPMorgan moved to withdraw the reference from the Bankruptcy Court, which was granted by the District Court (McMahon, J.) on May 23, 2011.

11. On June 3, 2011, JPMorgan moved to dismiss the Common Law Claims and certain of the Avoidance Claims in the Complaint. On June 24, 2011, the Trustee filed an amended complaint (the “Amended Complaint”). On August 1, 2011, JPMorgan moved to dismiss the Common Law Claims and certain of the Avoidance Claims in the Amended Complaint. The Trustee opposed. On November 1, 2011, the District Court granted JPMorgan’s motion to dismiss the Trustee’s Common Law Claims and returned all the Avoidance Claims to the Bankruptcy Court for further proceedings. *Picard v. JPMorgan Chase & Co.*, 460 B.R. 84 (S.D.N.Y. 2011).

12. The Trustee appealed to the United States Court of Appeals for the Second Circuit (the “Second Circuit”), which affirmed the District Court’s ruling on June 20, 2013. *Picard v. JPMorgan Chase & Co. (In re Bernard L. Madoff Investment Securities LLC)*, 721 F.3d 54 (2d Cir. 2013).

13. The Trustee sought review of the Second Circuit’s decision by the United States Supreme Court by filing a petition for a writ of certiorari on October 9, 2013. The Trustee’s petition is pending.

14. Shortly after the District Court dismissed the Trustee’s Common Law Claims, two class action complaints were filed in the District Court against JPMorgan in the names of the customer representatives, Stephen and Leyla Hill, *Hill v. JPMorgan Chase & Co.*, 11 Civ. 7961(CM); and Paul Shapiro, *Shapiro v. JPMorgan Chase & Co.*, 11 Civ. 8331(CM) (together, the “Customer Representatives”). These complaints asserted various claims against JPMorgan, similar to the Trustee’s Common Law Claims, on behalf of BLMIS customers who were “net

losers” as of the Filing Date arising out of the same facts and circumstances as those giving rise to the Common Law Claims previously brought by the Trustee.

15. On December 5, 2011, the District Court consolidated the Customer Representatives’ lawsuits (the “Consolidated Class Action”). On January 20, 2012, a consolidated class action complaint was filed against JPMorgan (the “Consolidated Class Action Complaint”), again asserting on behalf of the same proposed class (*i.e.*, BLMIS customers who were “net losers” as of the Filing Date) various claims against JPMorgan relating to Madoff (the claims set forth in the Consolidated Class Action Complaint together with the dismissed Common Law Claims are collectively referred to as the “Class Claims”).

16. On March 9, 2012, JPMorgan filed a motion to dismiss the Consolidated Class Action Complaint, which was opposed by the Customer Representatives. The Trustee filed a motion seeking limited intervention pursuant to Fed. R. Civ. P. 24(a)(2) in the Consolidated Class Action, which was granted by the District Court on October 16, 2012. On September 26, 2013, the District Court placed the Consolidated Class Action on the suspense calendar pending a decision from the United States Supreme Court in *Roland v. Green*, 675 F.3d 503 (5th Cir. 2012), *cert. granted sub nom. Chadbourne & Parke LLP v. Troice*, 133 S. Ct. 977 (U.S. Jan. 18, 2013) (No. 12-79). The parties submitted various letter briefs regarding *Chadbourne* and related issues with the result that the matter remains on the suspense calendar.

THE TRUSTEE’S AVOIDANCE CLAIMS AGAINST JPMORGAN

17. To fulfill his statutory obligations under 15 U.S.C. § 78fff -1(d), the Trustee, assisted by his counsel and consultants, investigated the relationship between BLMIS and JPMorgan. That investigation included, without limitation, the review and analysis of the “703” account and other banking accounts held by BLMIS at JPMorgan, correspondence and other records and documents available to the Trustee, including third-party records and documents;

interviews with third-parties; and documents and testimony provided by JPMorgan under Bankruptcy Rule 2004.

18. Through this investigation, the Trustee alleged that in connection with his Avoidance Claims, JPMorgan was liable for approximately \$276 million relating to subsequent transfers, approximately \$149 million for loans and interest, and approximately \$590,000 of banking fees, plus interest on those amounts.

19. JPMorgan has disputed any liability to the Estate under all counts alleged in the Trustee's Amended Complaint.

20. JPMorgan commenced negotiations to resolve all claims relating to Madoff, including those brought by the Trustee, the Customer Representatives, and the Government. The Parties have met face-to-face on numerous occasions and conducted frequent settlement negotiations by telephone.

21. After extensive negotiations, the Trustee and JPMorgan reached a compromise of the Avoidance Claims. The Agreement, including all exhibits attached thereto and incorporated therein, is the definitive document that reflects all of the terms and conditions of the Settlement between the Trustee and JPMorgan on the Avoidance Claims. *See* Exhibit A.

22. As a result of the Trustee's and his counsel's investigation, and the Parties' successful negotiations, and after thorough and deliberate consideration of the uncertainty, costs, and risks inherent in all litigation, the Trustee, in the exercise of his business judgment, determined that it was appropriate to reach a business resolution in light of all the facts and circumstances.

23. A separate compromise was entered into to settle the Common Law Claims. That compromise was negotiated in tandem with the settlement of the Avoidance Claims but is subject to separate agreement that includes the Customer Representatives.

OVERVIEW OF THE AGREEMENT

24. Certain salient terms and conditions of the Agreement are briefly summarized below. The Agreement should be reviewed for a complete account of other important terms, including with respect to mutual releases and the representations and warranties of the Parties. *See Exhibit A.*

25. The Agreement provides:

(a) The Settlement will become effective (the “Effective Date”) upon the entry of a final and non-appealable 9019 order (the “Final Avoidance 9019 Order”). The effectiveness of the Agreement is not conditioned on entry or approval of the separate agreement between the Trustee, JPMorgan, and the Class Representatives resolving the Common Law Claims in the Class Settlement.

(b) No later than fourteen (14) days after the Effective Date, JPMorgan shall pay to the Trustee \$325 million by wire transfer in full and final settlement of the Trustee’s Avoidance Claims.

(c) Within six (6) business days of the receipt of the payment of the Avoidance Settlement Amount, the Trustee will file a notice of dismissal dismissing the Avoidance Claims asserted in the JPMorgan Adversary Proceeding with prejudice and without costs to any of the Parties. From the date of the Agreement through the filing of a Notice of Dismissal of the Avoidance Claims, the JPMorgan Adversary Proceeding shall be stayed and no further actions may be taken by any of the Parties thereto. The Parties have agreed to refrain from making disparaging statements with respect to each other or the Settlement.

RELIEF REQUESTED

26. By this Motion, the Trustee respectfully requests that the Court enter an order, substantially in the form of the proposed order annexed to this Motion as Exhibit B approving the Settlement as memorialized in the Agreement.

LEGAL DISCUSSION

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

28. The Second Circuit has stated that in determining whether to approve a compromise, the court should not decide the numerous questions of law and fact raised by the compromise, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” *Cosoff v. Rodman (In re W T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir.), *cert. denied* *Cosoff v. Romon*, 464 U.S. 822 (1983) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir.), *cert. denied* 409 U.S. 1039 (1972)); *see also In re Chemtura*, 439 B.R. 561, 594 (Bankr. S.D.N.Y. 2010). “[T]he court need not conduct a ‘mini-trial’ to determine the merits of the underlying litigation.” *In re Purified Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993).

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

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

Fox v. Picard (In re Madoff), No. 10 Civ. 4652 (JGK), 2012 WL 990829, at *15 (S.D.N.Y. March 26, 2012) (quoting *Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 462 (2d Cir. 2007) (internal quotation marks and citations omitted)).

30. Even though the Court has discretion to approve settlements and must independently evaluate the reasonableness of the settlement, *In re Rosenberg*, 419 B.R. 532, 536 (Bankr. E.D.N.Y. 2009), the business judgment of the trustee and his counsel should be considered in determining whether a settlement is fair and equitable. *In re Chemtura Corp.*, 439 B.R. at 594. The competency and experience of counsel supporting the settlement may also be considered. *Nellis*, 165 B.R. at 122. Finally, the Court should be mindful of the principle that "the law favors compromise." *Vaughn v. Drexel Burnham Lambert Group, Inc.* (*In re Drexel Burnham Lambert Group, Inc.*), 134 B.R. at 499, 505 (quoting *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976)).

31. The Settlement is fair and equitable and in the best interests of the BLMIS customers and the Estate. See Affidavit of Irving H. Picard in Support of the Motion (the "Picard Aff.") ¶ 8, a true and accurate copy of which is annexed to this Motion as Exhibit C. The Agreement resolves all issues regarding the Trustee's Avoidance Claims against JPMorgan

without the need for protracted, costly, and uncertain litigation. Overall, the terms of the Agreement fall well above the lowest point in the range of reasonableness and all of the following considerations influenced the Trustee's decision to settle:

(a) Benefit to BLMIS Customers. The Settlement is a practical and fair compromise of complex litigation that will increase the fund of customer property and is thus in the best interests of BLMIS customers holding allowed claims. *Id.* ¶¶ 5-6. The Agreement enables the Trustee to increase the fund of customer property by approximately \$275 million. *See Picard Aff.* ¶¶ 6. Pursuant to the settlement by and among the Trustee and Kenneth Krys, the Foreign Representative and Liquidator of Fairfield Sentry Limited, Fairfield Sigma Limited, and Fairfield Lambda Limited (the "Fairfield Sentry Funds"), and as approved by this Court, *Picard v. Fairfield Sentry Limited*, Adv. Pro. No. 09-1239 (BRL), ECF Nos. 92, 95, the Fairfield Sentry Funds are entitled to share in the Avoidance Settlement Amount between the Trustee and JPMorgan. *See Agreement* at ¶ 10, annexed as Exhibit A to the Motion For Entry of Order Pursuant to Section 105(a) of the Bankruptcy Code and Rules 2002(a) and 9019(a) of the Federal Rules of Bankruptcy Procedure Approving an Agreement By and Between the Trustee and the Fairfield Sentry Funds (the "Fairfield Sentry Settlement Agreement"). The amount due to the Fairfield Sentry Funds is approximately \$50 million. The Fairfield Sentry Funds have been notified of this Settlement.

(b) Nature of Claims. A portion of the Trustee's claims concern subsequent transfers made to JPMorgan, where some of the initial transfers from BLMIS have been deemed avoidable subject to a settlement agreement, and other initial transfers from BLMIS remain the subject of litigation. Certain of the other claims pertain to two loans made by JPMorgan to BLMIS and the corresponding interest paid by BLMIS to JPMorgan, as well as transfers relating

to banking fees. Given JPMorgan's defenses, in particular with respect to these claims relating to the loans, the Trustee cannot be certain that he will prevail, or that substantially greater amounts would return to the estate through litigation. Picard Aff. ¶ 4.

(c) Avoidance of the Cost and Delay of Further Litigation. The Agreement eliminates the expense, delay, and uncertainty of litigation with JPMorgan. The Agreement also eliminates the inevitable delay caused by future likely appeals in this proceeding, which benefits the BLMIS fund of customer property and the Estate as a whole. *Id.* Even if successful in whole or part, litigation with JPMorgan would delay distributions for years. *Id.* ¶ 4.

(d) Finality. The Agreement puts an end to the Trustee's litigation of Avoidance Claims against JPMorgan. *Id.* ¶ 4. The Settlement is another tremendous step toward the Trustee's goal of returning 100% of principal losses to BLMIS customers as soon as possible. *Id.* ¶ 5.

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

(f) Product of Arms-Length Negotiation. The settlement is the product of arm's length and good faith negotiations between the Trustee and JPMorgan. *Id.* ¶ 7.

32. For all of the reasons discussed above, the Agreement is well within the "range of reasonableness," *In re W.T. Grant Co.*, 699 F.2d at 608 (quoting *Newman v. Stein*, 464 F.2d at 693), and confers a substantial benefit on the BLMIS fund of customer property and the Estate. The Trustee respectfully requests that the Court approve the Agreement. *Id.* ¶¶ 4, 8.

NOTICE

33. In accordance with Bankruptcy Rules 2002 and 9019, and the Order Establishing Notice Procedures and Limiting Notice entered on December 5, 2011 (“Order Limiting Notice”), ECF. No. 4560, notice of this Motion has been given to (i) SIPC; (ii) the SEC; (iii) the Internal Revenue Service; (iv) the United States Attorney for the Southern District of New York; and (v) Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York, 10019. Also in accordance with the Order Limiting Notice, the Trustee has provided notice by e-mail to interested parties in the SIPA liquidation proceeding of the following: the Motion; the date and time scheduled for the hearing at which this Court will consider the Motion; the date by which objections, if any, must be filed with this Court, and the name and address of the persons to be served with a copy of any objections.

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

Respectfully submitted,

Dated: January 7, 2014
New York, New York

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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 Estate of Bernard L. Madoff*

EXHIBIT A

AGREEMENT TO SETTLE AVOIDANCE CLAIMS

This AGREEMENT (“Agreement” or “Settlement”), dated as of January 6, 2014, is made by and among (i) IRVING H. PICARD, in his capacity as trustee (“Trustee”) for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act of 1970, 15 U.S.C. §§ 78aaa et seq., as amended (“SIPA”), and the substantively consolidated estate of Bernard L. Madoff (“Madoff”) (together, the “Estate”) and (ii) JPMORGAN CHASE & CO., JPMORGAN CHASE BANK, N.A., J.P. MORGAN SECURITIES LLC, and J.P. MORGAN SECURITIES LTD. (collectively, “JPMorgan”) (the Trustee and JPMorgan together referred to as the “Parties,” or singularly, “Party”).

BACKGROUND

A. BLMIS and its predecessor was a registered broker-dealer and a member of the Securities Investor Protection Corporation (“SIPC”).

B. On December 11, 2008, Madoff was arrested by federal agents for criminal securities laws violations including securities fraud, investment adviser fraud, and mail and wire fraud. On December 11, 2008 (the “Filing Date”), the Securities and Exchange Commission (the “Commission”) filed a complaint in the United States District Court for the Southern District of New York (the “District Court”) against, among others, BLMIS and Madoff, captioned SEC v. BLMIS, et al., No. 08-CV-10791(LLS).

C. On December 15, 2008, pursuant to section 78eee(a)(4)(A) of SIPA, the Commission consented to a combination of its own action with an application of SIPC. Thereafter, SIPC filed an application in the District Court under section 78eee(a)(3) of SIPA alleging, *inter alia*, that BLMIS was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protections afforded by SIPA. On December 15, 2008, the District Court granted the SIPC application and entered an order under SIPA, which, in pertinent part, appointed the Trustee for the liquidation of the business of BLMIS under section 78eee(b)(3) of SIPA and removed the case to the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) under section 78eee(b)(4) of SIPA, where it is currently pending as SIPC v. BLMIS, No. 08-01789 (BRL) (the “SIPA Proceeding”). The Trustee is duly qualified to serve and act on behalf of the Estate.

D. On December 2, 2010, the Trustee filed a complaint (the “Complaint”) commencing an adversary proceeding captioned Picard v. JPMorgan Chase & Co., et al., No. 10-4932 (BRL) (the “JPMorgan Adversary Proceeding”) against JPMorgan seeking to avoid and recover under 11 U.S.C. §§ 544(b), 547, 548 and 550 and the New York Uniform Fraudulent Conveyance Act (New York Debtor and Creditor Law §§ 270-281) (collectively, the “Avoidance Claims”) approximately \$425 million of transfers or other payments (the “Transfers”) received by JPMorgan prior to the collapse of BLMIS, along with interest thereon. The Trustee also asserted common law claims (the “Common Law Claims”) against JPMorgan, including aiding and abetting fraud, aiding and abetting breach of fiduciary duty, conversion, unjust enrichment, and contribution.

E. On February 8, 2011, JPMorgan moved to withdraw the reference from the Bankruptcy Court, which was granted by the District Court (McMahon, J.) on May 23, 2011.

F. On June 3, 2011, JPMorgan moved to dismiss the Common Law Claims and certain of the Avoidance Claims in the Complaint. On June 24, 2011, the Trustee filed an amended complaint (the "Amended Complaint"). On August 1, 2011, JPMorgan moved to dismiss the Common Law Claims and certain of the Avoidance Claims in the Amended Complaint. The Trustee opposed. On November 1, 2011, the District Court granted JPMorgan's motion to dismiss the Trustee's Common Law Claims and returned all the Avoidance Claims to the Bankruptcy Court for further proceedings. *Picard v. JPMorgan Chase & Co.*, 460 B.R. 84 (S.D.N.Y. 2011).

G. The Trustee appealed to the United States Court of Appeals for the Second Circuit (the "Second Circuit"), which affirmed the District Court's ruling on June 20, 2013. *Picard v. JPMorgan Chase & Co. (In re Bernard L. Madoff Investment Securities LLC)*, 721 F.3d 54 (2d Cir. 2013).

H. The Trustee sought review of the Second Circuit's decision by the United States Supreme Court by filing a petition for a writ of certiorari on October 9, 2013. The Trustee's petition is pending.

I. The Trustee believes he would prevail at trial on the Avoidance Claims and thus would recover the Transfers to JPMorgan along with interest. JPMorgan believes it has meritorious defenses to the Trustee's Avoidance Claims. The Parties wish to settle the Avoidance Claims without the expense, delay, and uncertainty of litigation.

J. The Parties have reached agreement under which JPMorgan would settle the Avoidance Claims by payment of \$325,000,000.00 to the Trustee (the "Avoidance Settlement Amount").

K. The Common Law Claims asserted by the Trustee and dismissed by the District Court are the subject of a separate settlement agreement (the "Common Law Settlement Agreement") by and among (i) JPMorgan, (ii) the Trustee, and (iii) STEPHEN HILL, LEYLA HILL, and PAUL SHAPIRO (the "Customer Representatives"), putative representatives of the proposed class of former BLMIS customers in the consolidated class actions captioned *Hill v. JPMorgan Chase & Co.*, 11 Civ. 7961 (S.D.N.Y.) and *Shapiro v. JPMorgan Chase & Co.*, 11 Civ. 8331 (S.D.N.Y.). This Agreement was negotiated in tandem with the Common Law Settlement Agreement and is intended, together with the Common Law Settlement Agreement, to fully and finally resolve any and all claims, controversies and disputes between and among the Trustee, the Customer Representatives and JPMorgan. However, the Trustee's Common Law Claims are not covered by this Agreement and the effectiveness of this Agreement is not conditioned on entry or approval of the Common Law Settlement Agreement.

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 Trustee and JPMorgan agree as follows:

AGREEMENT

1. Bankruptcy Court Approval of Settlement. Promptly after execution and delivery of this Agreement, the Trustee shall submit to the Bankruptcy Court a motion for approval of the Settlement pursuant to Section 105(a) of the Bankruptcy Code and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, including entry of an order substantially in the form attached hereto as Exhibit A (the "Avoidance 9019 Order"), after consulting in good faith with JPMorgan as to the language of the motion.

2. Effective Date. The Settlement contemplated by this Agreement shall become effective upon (the "Effective Date") the entry of a final and non-appealable 9019 Order (the "Final Avoidance 9019 Order"). For purposes of this Agreement, an order shall be considered final and non-appealable when (i) the time to appeal the order has expired, or (ii) if any appeal has been taken, any and all such appeals have been fully and finally resolved without material modification of the order. In the event that the Settlement does not become effective: (aa) this Agreement will not take effect and will become null and void for all purposes, except for paragraphs 15 and 17, which will continue to be effective and binding on the Parties; (bb) the stay of the JPMorgan Adversary Proceeding provided for in paragraph 6 will be lifted and the Trustee and JPMorgan will continue to litigate their respective claims and defenses in the JPMorgan Adversary Proceeding (provided, however, that the Trustee and JPMorgan shall work together in good faith to effectuate modifications to the Case Management Order applicable to the JPMorgan Adversary Proceeding to the extent a modification to the schedule is reasonably necessary); and (cc) the Parties will not use or rely on any statement herein in the JPMorgan Adversary Proceeding or in any public statement or other litigation relating to BLMIS or Madoff.

3. Payment To Trustee. No later than fourteen (14) days after the Effective Date, JPMorgan shall pay to the Trustee the Avoidance Settlement Amount by wire transfer in full and final settlement of the Trustee's Avoidance Claims.

4. Release By Trustee. In consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, except with respect to any rights arising under this Agreement, automatically upon JPMorgan making, after the Effective Date, the payment described in paragraph 3 and without any further action of the Parties, the Trustee, on behalf of himself, his professionals, and the Estate, hereby release, remit and forever discharge JPMorgan, its affiliates, and their respective predecessors, successors, assigns, current and former employees, and agents, from any and all past, present and future claims or causes of action arising under Chapter 5 of Title 11 of the United States Code (including any claims or causes of action for the avoidance or recovery of any transfer under Sections 544, 547, 548, and 550 of Title 11 of the United States Code), the New York Debtor and Creditor Law, or any other statute or law authorizing the avoidance of fraudulent or preferential transfers that are, have been, could have been or might in the future be asserted by the Trustee, on behalf of himself, his professionals, and the Estate, against JPMorgan, its affiliates, and their respective predecessors, successors, assigns and agents that arise out of, are based on, or relate in any way to BLMIS, Madoff, BLMIS or Madoff accounts at JPMorgan, or the JPMorgan Adversary Proceeding, including the Avoidance Claims asserted by the Trustee in the First through Twentieth Causes of Action in the Amended

Complaint. For the avoidance of doubt, the foregoing release shall not extend to the Common Law Claims asserted by the Trustee in the Twenty-First through Twenty-Eighth Causes of Action in the Amended Complaint (it being understood that a release of the Common Law Claims is provided for separately in the Common Law Claims Settlement).

5. Release By JPMorgan. In consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, except with respect to any rights arising under this Agreement, automatically upon JPMorgan making, after the Effective Date, the payment described in paragraph 3 and without any further action of the Parties, JPMorgan, its affiliates, and their respective predecessors, successors, assigns and agents, hereby releases, remits and forever discharges the Trustee, his professionals, and the Estate from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, damages, judgments, and claims whatsoever, asserted or unasserted, known or unknown, now existing or arising in the future, arising out of or in any way related to BLMIS; provided, however, that the foregoing release shall not extend to any counterclaims or defenses that JPMorgan has or in the future may have arising out of, related to, or in connection with the Trustee's Common Law Claims (it being understood that a release of such counterclaims and defenses is provided for separately in the Common Law Claims Settlement).

6. Dismissal Of Avoidance Claims in JPMorgan Adversary Proceeding. Within six (6) business days after receipt of the payment described in paragraph 3, the Trustee will file a Notice of Dismissal dismissing the Avoidance Claims asserted in the JPMorgan Adversary Proceeding with prejudice and without costs to any of the Parties. From the date of this Agreement through the filing of a Notice of Dismissal pursuant to this paragraph, the JPMorgan Adversary Proceeding shall be stayed and no further actions may be taken by any of the Parties thereto.

7. Further Assurances; Representations and Warranties. The Trustee and JPMorgan (a) agree to use their best efforts to consummate the Settlement in accordance with the terms of this Agreement, and (b) 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. The Trustee represents and warrants that the Trustee's release of any claims pursuant to this Agreement operates to release all such claims by either the Trustee or SIPC.

8. Exhibits; Entire Agreement. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. This Agreement, together with the exhibits attached hereto, constitutes the entire agreement and understanding between and among the Parties hereto and supersedes all prior agreements, representations and understandings concerning the subject matter hereof.

9. Amendments; Waiver. This Agreement may not be terminated, amended or modified in any way except in a writing signed by all 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.

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

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

12. No Third Party Beneficiary. The Parties do not intend to confer any benefit by or under this Agreement upon any person or entity other than the Parties and their respective successors and permitted assigns.

13. No Admission of Liability or Wrongdoing. By entering into this Agreement, JPMorgan does not admit that it has any liability to the Trustee.

14. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

15. Jurisdiction. The Bankruptcy Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of any orders of the Bankruptcy Court approving this Agreement.

16. 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. This Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations between the Parties, and all Parties have contributed substantially and materially to the preparation of this Agreement and the exhibits incorporated herein.

17. Confidentiality. All agreements by, between or among the Parties, their counsel and their other advisors as to confidentiality, including the confidentiality of information exchanged between or among them, shall remain in full force and effect and shall survive the execution of and any termination of this Agreement and the final consummation of the Settlement, if finally consummated, without regard to any of the conditions of the Settlement. The Parties agree to give each other Party the opportunity to review and approve in advance any press release, statements to the media or other public communications regarding this Agreement to be made in connection with the filing of the Agreement or other pre-filing public disclosure, such approval not to be unreasonably withheld. The Parties further agree to refrain from making disparaging statements about the other in any press release, statements to the media, or other public communications (including statements made in court filings or in court) relating to the Settlement, including the claims to be released pursuant to the Settlement, including prior to the Effective Date.

18. Counterparts; Electronic Copy Of Signatures. This Agreement and exhibits 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.

19. 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:

David J. Sheehan
E: dsheehan@bakerlaw.com
Seanna R. Brown
E: sbrown@bakerlaw.com
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, NY 10111
F: (212) 589-4201

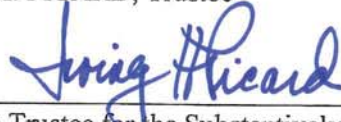
If to JPMorgan:

John F. Savarese
E: JFSavarese@wlrk.com
Stephen R. DiPrima
E: SRDiPrima@wlrk.com
Emil A. Kleinhaus
E: EAKleinhaus@wlrk.com
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
F: (212) 403-2000

[Signature page follows]

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

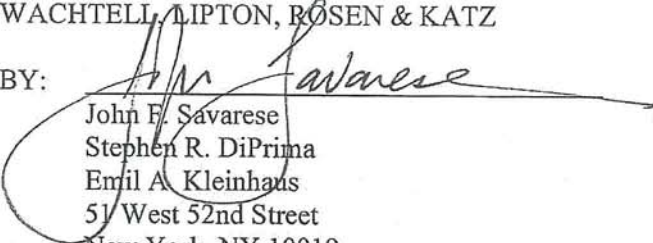
IRVING H. PICARD, Trustee



As Trustee for the Substantively
Consolidated SIPA Liquidation of Bernard
L. Madoff Investment Securities and
Bernard L. Madoff

WACHTELL, LIPTON, ROSEN & KATZ

BY:



John F. Savarese
Stephen R. DiPrima
Emil A. Kleinhans
51 West 52nd Street
New York, NY 10019

Attorneys for JPMorgan Chase & Co.,
JPMorgan Chase Bank, N.A., J.P. Morgan
Securities LLC, and J.P. Morgan Securities
Ltd.

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.

No. 08-01789 (BRL)

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.

JPMORGAN CHASE CO., JPMORGAN CHASE
BANK, N.A., J.P. MORGAN SECURITIES LLC, and
J.P. MORGAN SECURITIES LTD.,

Defendants.

Adv. Pro. No. 10-4932 (BRL)

**[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 OF AVOIDANCE CLAIMS BY AND
BETWEEN THE TRUSTEE AND JPMORGAN**

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 LLC
("BLMIS") and the estate of Bernard L. Madoff ("Madoff," and together with BLMIS, the

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

“Debtors”), seeking entry of an order, pursuant to section 105(a) of title 11, United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) and Rules 2002(a)(3) and 9019(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving a settlement of the Avoidance Claims as defined in the Motion (“Settlement”), the terms and conditions of which are set forth in the Settlement Agreement (the “Agreement”) dated January 6, 2014 by and among the Trustee and JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC, and J.P. Morgan Securities Ltd. (collectively, “JPMorgan” or “Defendants”); and it appearing that due and sufficient notice has been given to all parties in interest as required by Rules 2002(a)(3) and 9019(a) of the Federal Rules of Bankruptcy Procedure; and the Court having considered the Affidavit of Irving H. Picard in support of the Motion; and it further appearing the relief sought in the Motion is appropriate based upon the record of the hearing held before this Court to consider the Motion; and it further appearing that this Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and after due deliberation; and sufficient cause appearing therefor; it is

ORDERED, that the Motion is granted in its entirety; and it is further

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

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

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

Dated: New York, New York
_____, 2014

HONORABLE BURTON R. LIFLAND
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.

No. 08-01789 (BRL)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 10-4932 (BRL)

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

Plaintiff,

v.

JPMORGAN CHASE CO., JPMORGAN CHASE
BANK, N.A., J.P. MORGAN SECURITIES LLC,
and J.P. MORGAN SECURITIES LTD.,

Defendants.

**AFFIDAVIT 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 OF AVOIDANCE CLAIMS BY AND BETWEEN
THE TRUSTEE AND JPMORGAN**

STATE OF NEW YORK)

) ss:

COUNTY OF NEW YORK)

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

1. I am the trustee for the liquidation of the business of Bernard L. Madoff

Investment Securities LLC ("BLMIS") and the substantively consolidated estate of Bernard L.

Madoff (“Madoff,” and together with BLMIS, collectively, the “Debtors”). I am familiar with the affairs of the Debtors. I respectfully submit this Affidavit in support of the motion (the “Motion”) seeking entry of an order, pursuant to section 105(a) of title 11, United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) and Rules 2002(a)(3) and 9019(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving a settlement (“Settlement”), the terms and conditions of which are set forth in the Settlement Agreement (the “Agreement”) dated January 6, 2014 by and among the Trustee and JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC, and J.P. Morgan Securities Ltd. (collectively, “JPMorgan” or “Defendants”) (each of the Trustee and each of the Defendants a “Party” and collectively, the “Parties”).

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

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

4. I believe that the terms of the Settlement Agreement fall well above the lowest point in the range of reasonableness and, accordingly, should be approved by this Court. The Settlement Agreement resolves all of the Avoidance Claims against JPMorgan, without the need for protracted and uncertain litigation. I recognize that litigating the Avoidance Claims would undoubtedly require a significant commitment of time by the various professionals involved and would involve litigation risk. Moreover, it is likely that any litigation would result in future appeals, only delaying further the benefits to the customer fund.

5. I believe that when the Avoidance Settlement Amount is combined with the related Class Settlement and the settlement of the Government’s investigation, over \$2.243

billion will flow to “net loser” victims of Madoff’s fraud. Thus, I believe the Settlement makes good financial sense for both the Estate and the victims of Madoff’s fraud.

6. The Agreement also furthers the interests of the customers of BLMIS by adding a substantial amount of money to the fund of customer property.

7. The settlement is the product of arm’s length and good faith negotiations between the Trustee and JPMorgan.

8. For all of these reasons, I have determined in my business judgment that the Settlement, as memorialized in the Settlement Agreement, represents a fair, equitable and reasonable compromise of the Trustee’s claims and is in the best interests of BLMIS customers and the BLMIS Estate. I respectfully ask that the Court approve the Settlement as memorialized in the Agreement.

/s/ Irving H. Picard
IRVING H. PICARD

Sworn to before me this 7th
day of January 2014

/s/ Sonya M. Graham
Notary Public, State of New York
No. 01GR6133214
Qualified in Westchester County
Commission Expires September 12/2017