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Hearing Date: May 29, 2019
Time: 10:00 a.m.

Objection Deadline: May 22, 2019

*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,

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.

RUTH MADOFF,

Defendant.

Adv. Pro. No. 09-01391 (SMB)

**MEMORANDUM OF LAW IN SUPPORT OF TRUSTEE’S MOTION FOR ENTRY OF
AN ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE AND
RULES 2002 AND 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE
APPROVING A SETTLEMENT BY AND BETWEEN THE TRUSTEE AND
DEFENDANT RUTH MADOFF**

Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the Chapter 7 estate of Bernard L. Madoff (“Madoff”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”), by his undersigned counsel, respectfully submits this memorandum of law in support of his motion (the “Motion”) seeking entry of an order, pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving a settlement, the terms and conditions of which are set forth in the Settlement Agreement (the “Settlement”) (annexed hereto as **Exhibit 1**) by and between the Trustee and Defendant Ruth Madoff (the Trustee and Ruth Madoff are collectively referred to as the “Parties”).

PRELIMINARY STATEMENT

Ruth Madoff is the wife of Bernard Madoff, who was the chief architect of the BLMIS fraud. The Trustee brought the above-captioned adversary proceeding against her asserting claims for the return of fraudulent transfers and other benefits received from BLMIS in excess of \$44 million, as well as claims for unjust enrichment and conversion. Following the Trustee’s investigation, and multiple settlement negotiations during which counsel for Ruth Madoff raised various defenses to the Trustee’s claims, the Parties have reached a settlement pursuant to which Mrs. Madoff will turn over to the Trustee virtually all of her remaining assets, subject to allowances for Mrs. Madoff to pay reasonable living and medical care expenses incurred during her remaining lifetime. Mrs. Madoff will make a significant upfront payment to the Trustee

from her existing assets, with the final proceeds of the Settlement to be collected upon Mrs. Madoff's passing. When combined with additional substantial funds and assets that Bernard Madoff and Ruth Madoff forfeited to the Government, as described more fully herein, Mrs. Madoff will have effectively turned over for the benefit of victims of the BLMIS fraud all of her assets. In connection with the Settlement, Mrs. Madoff also has agreed to cooperate with the Trustee regarding the Trustee's pending litigations, and she expresses her appreciation for all of the efforts taken by the Trustee to recover monies for the victims of Bernard Madoff's criminal conduct.

This Settlement will close a significant chapter in the Trustee's investigation of the BLMIS fraud and will benefit the customers of BLMIS with allowed claims. The Trustee respectfully requests that this Court approve the Settlement.

BACKGROUND

On December 11, 2008 (the "Filing Date"), Madoff was arrested by federal agents for criminal violations of federal securities laws, including securities fraud, investment adviser fraud, and mail and wire fraud. Contemporaneously, the Securities and Exchange Commission ("SEC") brought a case captioned *Securities Exchange Commission v. Bernard L. Madoff Investment Securities LLC et al.*, No. 08 CV 10791 in the United States District Court for the Southern District of New York (the "District Court"), which was subsequently closed on March 17, 2015. The SEC's complaint alleges that Madoff and BLMIS engaged in fraud through the investment adviser activities of BLMIS.

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

On December 15, 2008, pursuant to SIPA § 78eee(a)(4)(A), the SEC consented to combining its action with an application by the Securities Investor Protection Corporation

(“SIPC”). Thereafter, pursuant to SIPA § 78eee(a)(4)(B), SIPC filed an application in the District Court alleging, among other things, that BLMIS could not meet its obligations to securities customers as they came due and its customers needed the protections afforded by SIPA.

Also, on December 15, 2008, Judge Stanton granted SIPC’s application and entered an order that:

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

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

At a plea hearing on March 12, 2009 (the “Plea Hearing”), in the case captioned *United States v. Madoff*, Case No. 09-CR-213(DC), Madoff pled guilty to an eleven-count criminal information filed against him by the United States Attorney for the Southern District of New York. At the Plea Hearing, Madoff admitted that he “operated a Ponzi scheme through the investment advisory side of [BLMIS],” (Plea Hr’g Tr. at 23: 14-17) and asserted “[a]s I engaged in my fraud, I knew what I was doing [was] wrong, indeed criminal.” (Id. at 23: 20-21). On June 29, 2009, Madoff was sentenced to 150 years in prison.

GOVERNMENT FORFEITURE

Pursuant to a Stipulation and Order dated June 26, 2009 (the “Forfeiture Stipulation”), Bernard Madoff and Ruth Madoff forfeited their homes, financial holdings and other property in connection with Bernard Madoff’s criminal sentence. The United States Government agreed not to contest Mrs. Madoff’s claim to \$2.5 million and to make a payment to her in that amount following forfeiture of the Madoffs’ assets (the “Forfeiture Payment”). The Forfeiture Stipulation expressly provides that the \$2.5 million payment to Mrs. Madoff “does not in any way preclude . . . Irving H. Picard, Esq. as trustee for the liquidation of the business of defendant Bernard L. Madoff Investment Securities LLC . . . from seeking to recover the Funds from Ruth Madoff.”

THE CLAIMS AGAINST RUTH MADOFF

In his complaint against Ruth Madoff (“Complaint”), the Trustee seeks the return of alleged fraudulent transfers in the amount of \$44,822,355 made during the six years prior to BLMIS’s collapse (the “Transfers”). Examples of the types of transfers include (i) transfers from BLMIS to finance personal gifts to Mrs. Madoff, (ii) BLMIS financing investments on Mrs. Madoff’s behalf, (iii) transfers by Madoff Securities International Ltd., a BLMIS-related company (“MSIL”), using BLMIS funds to Mrs. Madoff’s personal accounts, and (iv) transfers on her behalf to American Express. The Complaint also alleges Mrs. Madoff is liable for unjust enrichment and conversion.

Among other allegations, the Complaint asserts that Mrs. Madoff received the Transfers from BLMIS in the form of direct payments to her, as well as payments to entities she owned and/or controlled together with other family members or as investors. (*Id.* ¶¶ 23-34.) The Complaint further alleges that Mrs. Madoff’s investments in various investment funds were

financed entirely by BLMIS (*id.* ¶¶ 24, 27, 31, 38-39, 40); that MSIL made various wire transfers to Mrs. Madoff's personal bank accounts (*id.* ¶¶ 25-26, 29, 34-35); and that BLMIS funds were used to pay for Mrs. Madoff's personal expenses (*id.* ¶¶ 28, 30, 41).

The Trustee believes that all of the Transfers are avoidable and recoverable as set forth in the Complaint. Mrs. Madoff disputes that she is liable for the return of the Transfers. During the course of this adversary proceeding, she has raised various defenses, including that the Trustee is entitled only to a single satisfaction, and that the forfeiture of her assets to the Government overlaps the Trustee's claims. She also has asserted that she did not receive the benefit of the payments to American Express, and that to the extent any benefit could be attributable to her, it is only part of what the Trustee alleges.

RUTH MADOFF'S CREDITOR CLAIM AGAINST THE BLMIS ESTATE

On July 2, 2009, Ruth Madoff filed a general unsecured creditor claim with this Court, in which she asserted a contingent and unliquidated claim against the Debtors for contribution, indemnification, and/or reimbursement for any damages incurred in four specific civil actions where she was named as a defendant. The withdrawal of this claim is included in the Settlement.

THE TRUSTEE'S INVESTIGATION

The Trustee through his counsel and consultants conducted an investigation into Ruth Madoff, including but not limited to, her role in BLMIS, her investments with BLMIS, and her use of BLMIS monies to fund her personal lifestyle and personal business ventures. The Trustee's investigation included, without limitation, the review and analysis of documents and communications relating to, among other things, Mrs. Madoff's involvement with BLMIS and BLMIS-related entities, the Transfers, the source of Mrs. Madoff's assets, and Mrs. Madoff's alleged use of corporate funds. After a review of the relevant records, multiple settlement discussions with Mrs. Madoff's counsel, and consideration of Mrs. Madoff's remaining assets, as

well as the costs, uncertainty, and risks inherent in all litigation, the Trustee, in exercise of his business judgment, has determined that it is appropriate to resolve this matter rather than litigate the allegations in the Complaint and deplete funds that could be used to compensate the fraud victims.

OVERVIEW OF THE SETTLEMENT

The Parties have reached a settlement of the Trustee's claims as set forth in the Settlement Agreement attached hereto as **Exhibit 1**. The principal terms and conditions of the Settlement include:¹

- Mrs. Madoff shall make an upfront cash payment to the Trustee of Two Hundred and Fifty Thousand Dollars (\$250,000.00) by bank check, wire transfer or other immediately available funds pursuant to the two-installment payment schedule set forth in the Settlement.
- Mrs. Madoff shall cause to be transferred to the Trustee proceeds of two New York State 529 accounts at Ascensus Trust owned by Mrs. Madoff for the benefit of Grandchild A and Grandchild B valued at approximately Three Hundred Forty-Four Thousand Dollars (\$344,000.00), less any applicable taxes, penalties or fees relating to the accounts.
- The proceeds of all of Mrs. Madoff's remaining assets at the time of her death shall be transferred to the Trustee following her death through a revocable trust, over which the Trustee shall have the right to preclude any changes. Mrs. Madoff will provide the Trustee with a copy of her Last Will and Testament, the Revocable Trust Agreement, and other documents evidencing the entire transfer of her estate to the Trustee upon her death.
- The Revocable Trust created pursuant to the Settlement will be funded by accounts held by Mrs. Madoff at Stifel, Nicolaus & Company and Bank of America. Mrs. Madoff will be entitled to use the funds at such accounts to pay reasonable living and medical care expenses incurred during her lifetime.
- Mrs. Madoff shall provide an accounting to the Trustee on a semi-annual basis, which will set forth the amount of funds held in any and all accounts, the accrual of interest or other gains, if any, and a description and purpose of any deposits or withdrawals made therein exceeding \$500.

¹ Capitalized terms used in this Section but not defined in this memorandum of law shall have the meaning ascribed to them in the Settlement.

- Mrs. Madoff shall cooperate with the Trustee and SIPC to the extent that her assistance is requested in connection with any of the Trustee's pending litigations.
- Mrs. Madoff shall provide the Trustee with an executed Notice of Withdrawal of Creditor Claim with Prejudice.
- Mrs. Madoff releases the Trustee, his respective agents, and BLMIS and its consolidated estate, on the specific terms set forth in the Settlement.
- The Trustee releases Mrs. Madoff and her respective agents on the specific terms set forth in the Settlement.
- As soon as practicable after the Effective Date, and contingent upon the Bankruptcy Court's approval of the Trustee's 9019 Motion, the Trustee will file a Notice of Dismissal dismissing the Adversary Proceeding without prejudice and without costs to either party, subject to the right to reopen the Adversary Proceeding for an uncured default under the Settlement. Upon receipt of all of the Settlement Payments, and provided that there has been no default under the Settlement, the dismissal shall convert to a dismissal with prejudice.
- The Parties agree that the Settlement shall not be construed as or deemed to be evidence of an admission on the part of Mrs. Madoff to participating in or knowing of Bernard Madoff's fraud.

RELIEF REQUESTED

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 2** approving the settlement of this Adversary Proceeding pursuant to the agreement and terms as detailed in the Settlement.

LEGAL BASIS

Bankruptcy Rule 9019(a) states, in pertinent part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Courts have held that in order to approve a settlement or compromise under Bankruptcy Rule 9019(a), a court should find that the compromise proposed is fair and equitable, reasonable, and in the best interests of a debtor's estate. *Air Line Pilots Assoc., Int'l v. Am. Nat'l Bank & Trust Co. of*

Chicago (In re Ionosphere Clubs, Inc.), 156 BR 414, 426 (S.D.N.Y. 1993), *aff'd*, 17 F.3d 600 (2d Cir. 1994).

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. 1983), *cert. denied*, *Cosoff v. Rodman*, 464 U.S. 822 (1983) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972), *cert. denied*, 409 U.S. 1039 (1972)); *see also In re Chemtura Corp.*, 439 B.R. 561, 594 (Bankr. S.D.N.Y. 2010). “[T]he court need not conduct a ‘mini-trial’ to determine the merits of the underlying litigation.” *In re Purified Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993).

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

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

Fox v. Picard (In re Madoff), 848 F.Supp.2d. 469, 487-488 (S.D.N.Y. 2012), *aff'd*, 740 F.3d 81 (2d. Cir. 2014) (quoting *Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium*

Operating LLC), 478 F.3d 452, 462 (2d Cir. 2007) (internal quotation marks and citations omitted)).

Even though the Court has discretion to approve settlements and must independently evaluate the reasonableness of the settlement, *In re Rosenberg*, 419 B.R. 532, 536 (Bankr. E.D.N.Y. 2009), the business judgment of the trustee and his counsel should be considered in determining whether a settlement is fair and equitable. *In re Chemtura Corp.*, 439 B.R. at 594. The competency and experience of counsel supporting the settlement may also be considered. *Nellis v. Shugrue*, 165 B.R. 115, 122 (Bankr. S.D.N.Y. 1994). Finally, the Court should be mindful of the principle that “the law favors compromise.” *Vaughn v. Drexel Burnham Lambert Group, Inc. (In re Drexel Burnham Lambert Group, Inc.)*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991) (quoting *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976)).

The Trustee’s Settlement with Ruth Madoff is fair and equitable and in the best interests of the Estate and the customers of BLMIS. *See* Affidavit of the Trustee in Support of the Motion (the “Picard Affidavit”). A true and accurate copy of the Picard Affidavit is attached hereto as **Exhibit 3**.

The following considerations influenced the Trustee’s decision to settle:

1. Benefit to BLMIS Customers

The Settlement furthers the interests of the customers of BLMIS by adding more than one-half million dollars immediately to the fund of customer property maintained by the Trustee, as well as provides for the entire remainder of Mrs. Madoff’s assets to be transferred to the Trustee following her death. This represents virtually *all* of Mrs. Madoff’s assets after the Forfeiture, subject only to Mrs. Madoff’s reasonable living and medical care payments during her lifetime.

2. Avoidance of the Cost, Delay, and Risk of Further Litigation

The Settlement eliminates the expense and delay of litigation, which would likely require extensive and costly discovery, and a prolonged trial. The Trustee cannot be certain that he would prevail in such a litigation, or that, even if success were guaranteed, any litigation recovery would be substantially greater than the sums he is recovering through this Settlement. Moreover, even if successful in whole or in part, litigation with Mrs. Madoff would delay distributions for years and merely reduce the amount of funds available for the victims of the fraud.

3. Collection

In light of the substantial amount of the Trustee's claims against Mrs. Madoff, she would inevitably use her remaining assets to fund her defense against the Trustee. Settling this matter allows those funds to go directly to the BLMIS fund of customer property and not to pay legal fees.

4. Finality

The Settlement resolves all claims between and among the Trustee and Ruth Madoff.

5. Experienced Counsel and Arms-Length Negotiations

The Parties are represented by sophisticated and experienced counsel. The Settlement is the product of extensive arm's length and good faith negotiations between counsel for the Trustee and counsel for Mrs. Madoff.

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

NOTICE

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

CONCLUSION

The Trustee hereby requests that this Court approve the Settlement because it represents a fair and reasonable compromise which greatly benefits the BLMIS customer fund and avoids lengthy, burdensome, and expensive litigation that would greatly reduce—if not entirely deplete—the funds available to be paid to the victims of the fraud. The Settlement is well within the “range of reasonableness” and confers a substantial benefit on the BLMIS estate, and the Trustee respectfully requests entry of an Order substantially in the form of **Exhibit 2** hereto granting the relief requested in the Motion.

Dated: May 3, 2019
New York, New York

BAKER & HOSTETLER LLP

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Hearing Date: May 29, 2019
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Objection Deadline: May 22, 2019

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,

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.

RUTH MADOFF,

Defendant.

Adv. Pro. No. 09-01391 (SMB)

**NOTICE OF MOTION FOR ENTRY OF AN ORDER PURSUANT TO SECTION 105(a)
OF THE BANKRUPTCY CODE AND RULES 2002 AND 9019 OF THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE APPROVING A SETTLEMENT BY AND
BETWEEN THE TRUSTEE AND DEFENDANT RUTH MADOFF
IN THE ABOVE-CAPTIONED PROCEEDING**

PLEASE TAKE NOTICE that Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the Chapter 7 Estate of Bernard L. Madoff (“Madoff,” and together with BLMIS, collectively, the “Debtors”), by and through his undersigned counsel, will move before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge, at the United States Bankruptcy Court, the Alexander Hamilton Customs House, One Bowling Green, Courtroom 723, New York, New York 10004, on **May 29, 2019 at 10:00 a.m.**, or as soon thereafter as counsel can be heard, for an order, pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, approving a Settlement Agreement (“Settlement”) by and between the Trustee and Defendant Ruth Madoff in the above-captioned proceeding (collectively, the “Parties”).

PLEASE TAKE FURTHER NOTICE that responses or objections to the Motion, if any, must be in writing, shall conform to the Bankruptcy Rules and other applicable rules and orders of this Court, and shall be filed in accordance with General Order M-399 and the electronic filing procedures for the United States Bankruptcy Court for the Southern District of New York (available at www.nysb.uscourts.gov), with a courtesy copy delivered to the Chambers of the Honorable Stuart M. Bernstein, and shall be served upon (a) Keith R. Murphy, Esq., Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, NY 10111; (b) Peter Chavkin, Esq., Mintz Levin Cohn Ferris Glovsky & Popeo, P.C., 666 Third Avenue, New York, NY 10017; and (c) Securities Investor Protection Corporation, 1667 K Street, N.W., Suite 1000, Washington, D.C. 20006, Attn: Kevin Bell, Esq., so as to be received no later than **May 22, 2019**. Any objections must specifically state the interest that the objecting party has in these proceedings and the specific basis of any objection to the Motion.

PLEASE TAKE FURTHER NOTICE that if no responses or objections are timely filed and served with respect to the Motion, the Motion shall be deemed uncontested and an order granting the requested relief may be entered with no further notice or opportunity to be heard offered to any party.

Dated: May 3, 2019
New York, New York

BAKER & HOSTETLER LLP

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substantively consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
and the Chapter 7 Estate of Bernard L. Madoff*

EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (this “Agreement”) is made and entered into as of May 3, 2019, by and between Irving H. Picard, in his capacity as the Trustee (“Trustee” or “BLMIS Trustee”) for the liquidation proceedings under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”) of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the substantively consolidated Chapter 7 case of Bernard L. Madoff (“Bernard Madoff”) pending before the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), on the one hand, and Ruth Madoff (“Ruth Madoff”), on the other hand. The Trustee and Ruth Madoff shall be hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

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

WHEREAS, on December 11, 2008, the Commission filed a complaint in the United States District Court for the Southern District of New York (the “District Court”) against BLMIS and Bernard Madoff. On December 12, 2008, the District Court entered an order which, among other things, appointed Lee S. Richards, Esq. as receiver (the “Receiver”) for the assets of BLMIS (No. 08-CV-10791(LSS));

WHEREAS, on December 15, 2008, pursuant to section 5(a)(4)(A) of SIPA, the Commission consented to a combination of its own action with the application of SIPC. Thereafter, SIPC filed an application in the District Court under section 5(a)(3) of SIPA alleging, *inter alia*, that BLMIS was not able to meet its obligations to securities customers as they came

due and, accordingly, its customers needed the protections afforded by SIPA. On December 15, 2008, the District Court granted the SIPC application and entered an order under SIPA, which, in pertinent part, appointed Trustee as the trustee for the liquidation of the business of BLMIS under section 5(b)(3) of SIPA, removed the Receiver as the receiver for BLMIS, and removed the case to the Bankruptcy Court under section 5(b)(4) of SIPA, where it is currently pending as Case No. 08-01789 (SMB). By Order dated June 9, 2009, the Chapter 7 Madoff Estate (the “Madoff Estate”) (Case No. 09-11893) was substantively consolidated with the estate of BLMIS (the “Consolidated BLMIS Estate”);

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

WHEREAS, under SIPA, the Trustee is charged with, among other things, the responsibility to marshal and liquidate the assets of BLMIS for distribution to BLMIS customers and others in accordance with SIPA in satisfaction of allowed claims, including through the recovery of avoidable transfers such as preference payments and fraudulent transfers made by BLMIS;

WHEREAS, the Trustee’s claims against transferees who received avoidable transfers from BLMIS arise under SIPA, including sections 78fff(b), 78fff-1(a) and 78fff-2(c)(3), sections 105(a), 541, 544, 547, 548, 550(a) and 551 of the Bankruptcy Code, the New York Debtor and Creditor Law § 270 *et seq.* (McKinney 2001) and other applicable laws;

WHEREAS, Bernard Madoff and Ruth Madoff have forfeited their homes, financial holdings, and other property in connection with Bernard Madoff's criminal sentence. The United States government agreed not to contest Ruth Madoff's claim to \$2.5 million and to make a payment to her in that amount following the forfeiture of their assets. The forfeiture Stipulation and Order, dated June 26, 2009 (the "Forfeiture"), expressly provides that the \$2.5 million payment to Ruth Madoff "does not in any way preclude...Irving H. Picard, Esq. as trustee for the liquidation of the business of defendant Bernard L. Madoff Investment Securities LLC...from seeking to recover the [\$2.5 million] from Ruth Madoff (the "Forfeiture Payment");"

WHEREAS, since the entry of the Forfeiture, Ruth Madoff has utilized a portion of the Forfeiture Payment to pay for legal and other reasonable living expenses;

WHEREAS, in July 2009, Ruth Madoff filed a general unsecured creditor claim in these proceedings seeking indemnification, contribution and/or reimbursement (the "Ruth Madoff Creditor Claim"). The Ruth Madoff Creditor Claim is attached as **Exhibit 1** to this Agreement;

WHEREAS, on July 29, 2009, the Trustee commenced an adversary proceeding in the Bankruptcy Court against Ruth Madoff in an action captioned *Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC v. Ruth Madoff*, Adv. Pro. No. 09-01391 (SMB) (the "Adversary Proceeding");

WHEREAS, Trustee alleges in the Adversary Proceeding that Ruth Madoff received avoidable transfers in the aggregate amount of Forty-Four Million Eight Hundred and Twenty-Two Thousand and Three Hundred and Fifty-Five United States Dollars (\$44,822,355.00) (the "Avoidable Transfers");

WHEREAS, on July 29, 2010, the Trustee commenced an adversary proceeding in the Bankruptcy Court in the matter captioned *Irving H. Picard, Trustee for the Liquidation of Bernard*

L. Madoff Investment Securities LLC v. Madoff Technologies LLC, et al., Adv. Pro. No. 10-03483 (SMB), from which the Trustee voluntarily dismissed Ruth Madoff as a defendant on June 26, 2017 (ECF No. 117);

WHEREAS, this Agreement shall not be construed as or deemed to be evidence of an admission on the part of Ruth Madoff to participating in or knowing of Bernard Madoff's fraud;

WHEREAS, pursuant to an order of the Bankruptcy Court, dated November 12, 2010 (the "Settlement Procedures Order"), Case No. 08-01789 (SMB) (ECF No. 3181), the Trustee will seek Bankruptcy Court approval to enter into this Agreement in final settlement of the Consolidated BLMIS Estate's claims against Ruth Madoff; and

WHEREAS, the Parties wish to settle any and all claims and disputes, including the Ruth Madoff Creditor Claim, that they have without the expense, delay, and uncertainty of litigation.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants, promises and undertakings set forth herein, and for good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged for all purposes, the Trustee and Ruth Madoff agree as follows:

1. Incorporation of Recitals. The recitals set forth above are fully incorporated herein.
2. Effective Date. The "Effective Date" of this Agreement shall be the date on which the Bankruptcy Court's Order granting the relief sought in the 9019 Motion (the "9019 Motion") filed by the Trustee in the Adversary Proceeding seeking approval to enter into this Agreement (the "9019 Order") is no longer subject to appeal. If the Bankruptcy Court denies the 9019 Motion, this Agreement shall be null and void, with no force or effect.
3. Claim Withdrawn. On the Effective Date, Ruth Madoff will deliver to the Trustee

an executed Notice of Withdrawal of Creditor Claim with Prejudice, in the form attached hereto as **Exhibit 2** to this Agreement.

4. Settlement Payments. In connection with the settlement, Ruth Madoff shall pay or cause to be paid the following:

a. Settlement Cash Payments. Two Hundred and Fifty Thousand Dollars (\$250,000.00) to the Trustee by bank check, wire transfer or other immediately available funds (“Settlement Cash Payment”) in the following installments:

i. One Hundred and Fifty Thousand Dollars (\$150,000) within two (2) days of the Effective Date (“First Payment”); and

ii. One Hundred Thousand Dollars (\$100,000) on or before the one-year anniversary of the First Payment.

b. 529 Accounts. Ruth Madoff shall cause to be transferred to the BLMIS Trustee within two (2) days of the Effective Date the proceeds of two New York State 529 accounts held at Ascensus Trust owned by Ruth Madoff for the benefit of Grandchild A and Grandchild B, with an approximate aggregate balance of \$344,000.00 (collectively, the “529 Accounts”), less any applicable taxes, penalties or fees relating to the 529 Accounts (“529 Proceeds”).

c. Remainder of Estate Payment. The proceeds of all of Ruth Madoff’s remaining assets at the time of her death shall be transferred to the Trustee following Ruth Madoff’s passing. To effectuate this provision, Ruth Madoff shall take the actions set forth below. Collectively, the Settlement Cash Payments, the 529 Proceeds, and the Remainder of Estate Payment are the “Settlement Payments.”

5. Delivery of Will, Power of Attorney and Appointment of Health Care

Representative. Within fourteen (14) days of the date this Agreement is executed by the Parties (the “Execution Date”), Ruth Madoff shall deliver to the Trustee copies of the following executed documents, which shall remain in escrow until the Effective Date:

a. Last Will and Testament of Ruth Madoff (the “Will”) (i) identifying Peter Goldman, Esq. as Ruth Madoff’s personal representative upon her death, and (ii) pouring-over all assets then individually owned by her to her Revocable Trust (defined herein).

b. Durable Power of Attorney of Ruth Madoff (the “Power of Attorney”), which shall provide, among other matters, that in the event Ruth Madoff is incapacitated, the attorney appointed by such instrument will be appointed as Ruth Madoff’s guardian and/or conservator.

c. Appointment of Health Care Representative of Ruth Madoff (the “Healthcare Proxy”, and together with the Will and the Power of Attorney, the “Planning Documents”).

6. Revocable Trust. Within fourteen (14) days of the Execution Date, Ruth Madoff shall enter into an agreement (“Revocable Trust Agreement”) to create a revocable trust (the “Revocable Trust”). The Revocable Trust Agreement shall have the following provisions:

a. Trust Assets: The assets of the Revocable Trust shall initially be (1) account(s) held by Ruth Madoff at Stifel, Nicolaus & Company (the “Stifel Account(s)”), the title to which shall be transferred to the Revocable Trust within two (2) days of the Effective Date, and (2) accounts held by Ruth Madoff at Bank of America, with ending account numbers 7353 and 3229 (together with the Stifel Accounts, the “Bank Accounts”); the title to such Bank Accounts shall be transferred to the Revocable Trust within two (2) days of the Effective Date.

b. Beneficiary: Ruth Madoff shall be the sole lifetime beneficiary of the

Revocable Trust, to be succeeded upon her death by the BLMIS Trustee. During her lifetime, Ruth Madoff shall be entitled, subject to the provisions of Section 9 of this Agreement, to use funds in the Bank Accounts to pay reasonable living and medical care expenses, including long term care if needed. Ruth Madoff shall not use or move her funds in the Bank Accounts except to pay such reasonable living and medical care expenses.

c. Estate: At Ruth Madoff's death, the proceeds of her entire estate (the "Ruth Madoff Estate"), except for the tangible personal property identified in Exhibit 3 to this Agreement, shall pass to the BLMIS Trustee as the sole beneficiary of the Revocable Trust.

d. Trustees: The trustees of the Revocable Trust shall be Ruth Madoff, and Peter Goldman, Esq. as an independent third party. The successor trustee(s) shall be as set forth in the Revocable Trust Agreement.

e. BLMIS Trustee's Consent: The Revocable Trust shall provide that it may not be modified or revoked at any time without the prior written consent of the BLMIS Trustee or his designated successor.

f. Purpose: The purpose of the Revocable Trust is restitution to the BLMIS Trustee under this Agreement in satisfaction of the claims in the Adversary Proceeding.

7. Remainder of Estate Payment. Following Ruth Madoff's death, the following shall take place:

a. Within ten (10) days of Ruth Madoff's death, the personal representative of Ruth Madoff's estate (if any), the agent under the Power of Attorney, and/or the surviving trustee(s) of the Revocable Trust shall notify the Trustee of her death.

b. Within sixty (60) days following Ruth Madoff's death, the surviving trustee(s) of the Revocable Trust shall take the following steps to fund the final payment in

satisfaction of this Agreement (the “Remainder of Estate Payment”): (1) liquidate the assets in the Revocable Trust and transfer the same to the BLMIS Trustee, and (2) transfer the proceeds of the entire Ruth Madoff Estate, except for the tangible personal property identified in Exhibit 3 to this Agreement, to the BLMIS Trustee.

c. Within the fourteen (14) day period after the Execution Date, Ruth Madoff will provide the BLMIS Trustee and/or his undersigned counsel with an opportunity to view and inspect the Planning Documents, Revocable Trust Agreement, and other necessary documents (collectively, the “Transfer Documents”) evidencing the entire transfer of Ruth Madoff’s estate to the Revocable Trust upon her death. Ruth Madoff’s counsel will keep the finalized Transfer Documents in escrow until the Effective Date. On the Effective Date, Ruth Madoff will provide the Trustee with a copy of the Transfer Documents evidencing the entire transfer of her estate to the BLMIS Trustee upon her death, pursuant to the Revocable Trust Agreement. In addition, as provided in Section 6 above, within two (2) days after the Effective Date, Ruth Madoff shall cause the Bank Accounts to be transferred to the Revocable Trust. Ruth Madoff shall not transfer, gift, bequeath, sell, donate, encumber, or otherwise dispose of any of her remaining assets in contravention of this Agreement.

d. Ruth Madoff represents and warrants that none of her estate planning documents, including the Transfer Documents or other arrangements or understandings, will provide for the disposition of the assets comprising the Remainder of Estate Payment inconsistent with the terms of this Agreement, and such documents will not be modified in the future in any manner inconsistent with Ruth Madoff’s obligations hereunder. The representations set forth in this Section are a material inducement upon which the BLMIS Trustee is relying and shall survive in perpetuity, pending occurrence of the Effective Date.

e. Any future earnings, financial gains, gifts received by Ruth Madoff or any and all subsequently discovered property are expressly contemplated by this Agreement as to be held in trust for future satisfaction of the Remainder of Estate Payment, except for certain shares of specific stock (with an aggregate value of under \$10,000), the dividends from which are periodically being sent by Ruth Madoff's counsel to the U.S. Attorney's Office for the Southern District of New York. In other words, Ruth Madoff's assets for satisfaction of the Remainder of Estate Payment are not intended to be limited to Ruth Madoff's assets at the time of execution of this Agreement. It is understood and agreed by the parties that any additional, future income or assets received by Ruth Madoff are also to be included in the pool of assets to be held in the Revocable Trust for future satisfaction of the Remainder of Estate Payment, and transferred to the BLMIS Trustee following Ruth Madoff's death.

8. Carve-Out Assets. Ruth Madoff agrees to hold all remaining assets in trust for future satisfaction of the Remainder of Estate Payment except for the following assets (the "Carve-Out Assets"):

a. The approximately 2010 Toyota Prius currently owned by Ruth Madoff. The purchase of a like vehicle to replace the Prius, if needed, is expressly deemed a reasonable living expense as set forth in this Agreement.

b. Certain personal property as listed on Exhibit 3 to this Agreement and any item acquired after this Agreement, to the extent such after-acquired property is valued at under Five Hundred Dollars (\$500.00).

9. Semi-Annual Reports. Ruth Madoff (and/or the agent under her Power of Attorney and/or the trustees under the Revocable Trust) shall provide an accounting to the Trustee on a semi-annual basis (every six months), beginning at the end of the first six months

after the Effective Date of this Agreement and concluding with a final accounting following her death (“Six-Month Report”). The final accounting shall be provided to the Trustee by Ruth Madoff’s estate, personal representatives and/or surviving trustee(s) of the Revocable Trust within 45 days following Ruth Madoff’s death. Each Report will set forth the amount of funds held in any and all accounts, the accrual of interest or other gains, if any (both of which can be satisfied by providing a complete account statement of any accounts held by Ruth Madoff), and a description and purpose of any deposits or withdrawals made therein exceeding \$500.

10. Representations.

a. To induce the Trustee to enter into this Agreement, Ruth Madoff also agrees, represents and warrants to be interviewed by the Trustee and/or his attorneys, at mutually agreed upon times, and to cooperate with the Trustee and SIPC to the extent that her assistance is requested in connection with any of the Trustee’s pending litigations. In this regard, Ruth Madoff wants to express her appreciation for all of the efforts taken by the Trustee to recover monies for the victims of Bernard Madoff’s criminal conduct.

b. If any of the representations made by Ruth Madoff to the Trustee in this Agreement, including its Exhibits, are later discovered to have been knowingly or recklessly false and material, the Agreement is deemed to be breached, and the Trustee may immediately foreclose on her remaining assets without further judicial process.

c. Ruth Madoff hereby represents and warrants that she does not have current ownership, custody or control of, or any rights to, any assets or property of any kind or description, real, personal or otherwise and wherever located, as an individual, beneficiary or fiduciary—including any assets to be paid or payable on or as a result of her death from any and all sources and for any reason—other than the assets or property identified in this Agreement and the tangible

personal property listed on Exhibit 3 to this Agreement, which the BLMIS Trustee has relied upon in entering this Agreement.

11. Release by the Trustee; Dismissal of Adversary Proceedings.

a. Upon the Effective Date and subject to confirmation that the obligations set forth in Sections 3 – 7 and Section 9 of this Agreement have been satisfied, other than future obligations, the Trustee on behalf of the Consolidated BLMIS Estate hereby releases, remises, and forever discharges Ruth Madoff and Ruth Madoff’s attorneys, professionals, agents and consultants, from any and all past, present or future claims or causes of action (including any suit, petition, demand, or other claim in law, equity or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorneys’ fees, costs or disbursements) known or unknown, that are, have been, could have been, or might in the future be, asserted by Trustee on behalf of the Consolidated BLMIS Estate, against Ruth Madoff based on, arising out of, or relating in any way to BLMIS, the Chapter 7 Madoff Estate or the Avoidable Transfers (collectively, the “Trustee Released Claims”).

b. As soon as practicable after the Effective Date and confirmation that the obligations set forth in Sections 3 - 7 and Section 9 of this Agreement have been satisfied, other than future obligations, counsel for the Trustee shall subsequently execute and file a Notice of Dismissal dismissing the Adversary Proceeding without prejudice and without costs to either the Trustee or Ruth Madoff, subject only to the right of the Trustee to reopen the Adversary

Proceeding for an uncured default under this Agreement and /or to enforce this Agreement.

Upon receipt of all the Settlement Payments, and provided that there has been no default under this Agreement, the dismissal shall automatically convert to a dismissal with prejudice.

c. Subject to Section 10(b), should the Trustee conclude that any provision of this Agreement has been breached, the Trustee will notify Ruth Madoff, through her undersigned counsel, and she will have five (5) business days to cure that default, unless extended by the Trustee.

12. Release by Ruth Madoff.

a. Upon the Effective Date, Ruth Madoff releases, remises, and forever discharges: (i) the Trustee, (ii) all of the Trustee's attorneys, professionals, agents and consultants, and (iii) the Consolidated BLMIS Estate from any and all past, present or future claims or causes of action (including any suit, petition, demand, or other claim in law, equity or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorneys' fees, costs or disbursements) known or unknown, that are, have been, could have been, or might in the future be, asserted by Ruth Madoff against the Trustee, all of the Trustee's attorneys, professionals, agents and consultants, and BLMIS and its consolidated estate based on, arising out of, or relating in any way to BLMIS, the Chapter 7 Madoff Estate, or the Avoidable Transfers (collectively "Ruth Madoff Released Claims").

13. Further Assurances.

a. Each of the Parties hereto shall execute and deliver such documents, instruments and agreements, including the Transfer Documents, and take such further actions as may be reasonably required or desirable to carry out the provisions of this Agreement and the transfers contemplated hereby, and each of the Parties hereto shall cooperate with each other in connection with the foregoing.

b. If, at any time after the Effective Date, the Trustee shall determine or be advised that any further assignment, conveyance or assurance in law or any other acts are necessary or desirable to vest, perfect and/or confirm the Trustee's right, title and interest in Ruth Madoff's Estate upon her death, or otherwise to carry out the purpose of this Agreement, Ruth Madoff agrees to promptly execute and deliver all such proper assignments, conveyances and assurances in law and to do all acts reasonably necessary or proper to vest, perform or confirm the Trustee's title to, and possession of, the proceeds of her entire remaining Estate upon her death.

14. Entire Understanding; Negotiated Agreement. The Parties hereby agree that this Agreement, including the Exhibits hereto, is the entire understanding of the Parties with respect to the subject matter of this Agreement and supersedes any and all prior or contemporaneous agreements, representations and understandings of the Parties concerning the subject matter hereof. This Agreement has been fully negotiated by the Parties, and each Party has been represented by counsel of its choosing. The Parties agree that each participated equally in the preparation of this Agreement, and that no provision shall be construed against any other Party as draftsman.

15. No Third-Party Beneficiaries. The Parties do not intend to confer any benefit by or under this Agreement upon any person or entity other than the Trustee and Ruth Madoff. No person or entity shall be entitled to assert any rights under this Agreement other than the Trustee

and Ruth Madoff, nor shall any person or entity other than the Trustee and Ruth Madoff be permitted to use this Agreement as evidence of an admission regarding any claim, right, or defense that such person or entity may assert.

16. Assignment. The Trustee shall have the right, with written notice to Ruth Madoff, to assign this Agreement. Ruth Madoff shall not have the right to assign this Agreement.

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

18. Amendment. This Agreement may not be changed, modified, or amended except in a writing signed by the Parties and/or their counsel or as approved by the Bankruptcy Court.

19. Waiver. 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. Severability. In the event that any term or provision of this Agreement or any application thereof is deemed to be invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision shall not be affected thereby.

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

22. Expenses. Each Party shall bear its respective expenses relating to or arising out of the Bankruptcy Court proceedings and this Agreement, including, but not limited to, fees for

attorneys, experts, consultants, accountants and other advisors.

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

24. Counterparts; Electronic Copy of Signatures. This Agreement may be executed in any number of counterparts and shall constitute one agreement, binding upon all Parties hereto as if all Parties signed the same document. Further, all facsimile and digital images of signatures shall be treated as originals for all purposes.

25. Jurisdiction. The Bankruptcy Court shall retain exclusive jurisdiction with respect to any and all issues or disputes that may arise in connection with this Agreement and its enforcement. Each side shall bear its own costs and fees in any dispute brought before the Bankruptcy Court under this paragraph. In the event the BLMIS proceeding is closed by a final decree and not reopened, the Parties agree that any dispute arising out of this Agreement may be brought in the United States District Court for the Southern District of New York or in the Supreme Court of the State of New York in New York County.

AGREED TO BY:


**IRVING H. PICARD, IN HIS
CAPACITY AS THE TRUSTEE
FOR THE LIQUIDATION
PROCEEDINGS OF BERNARD L.
MADOFF INVESTMENT
SECURITIES LLC AND THE
SUBSTANTIVELY
CONSOLIDATED BANKRUPTCY
ESTATE OF BERNARD L.
MADOFF**

Dated: May 3, 2019
New York, New York



IRVING H. PICARD

BAKER HOSTETLER LLP
Attorneys for the Trustee



DAVID J. SHEEHAN, ESQ.
KEITH R. MURPHY, ESQ.
MELISSA CARVALHO, ESQ.

RUTH MADOFF

Dated: May __, 2019
New York, New York

RUTH MADOFF

MINTZ LEVIN COHN FERRIS
GLOVSKY AND POPEO, P.C.
Attorneys for Ruth Madoff

PETER A. CHAVKIN, ESQ.

Dated: May __, 2019
New York, New York


IRVING H. PICARD

BAKER HOSTETLER LLP
Attorneys for the Trustee

DAVID J. SHEEHAN, ESQ.
KEITH R. MURPHY, ESQ.
MELISSA CARVALHO, ESQ.

RUTH MADOFF

Dated: May 3, 2019
New York, New York



RUTH MADOFF

MINTZ LEVIN COHN FERRIS
GLOVSKY AND POPEO, P.C.
Attorneys for Ruth Madoff



PETER A. CHAVKIN, ESQ.

EXHIBIT 1

PROOF OF CLAIM

RECEIVED

JUL 02 2009

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE) Adv. Proc. No. 08-01789-BRLA
)
) SIPA Liquidation
)
) (Substantively Consolidated)
BERNARD L. MADOFF)
INVESTMENT SECURITIES LLC,) Amount of Claim \$ Unliquidated;
) See Attached Addendum
)
Debtor.) Claimed As: ☒ General Unsecured
) ☐ Priority (see Paragraph 10)
) ☐ Secured (see Paragraph 9)

In re:) **This claim is filed as a contingent and**
) **unliquidated claim, effective in the**
) **event Ruth Madoff incurs liability on**
BERNARD L. MADOFF,) **one of the civil lawsuits listed on the**
) **attached Addendum, all as more fully**
Debtor) **set forth in the attached Addendum.**
)

1. Name of Creditor
(Print or Type): Ruth Madoff

Mailing Address: Redacted
City Redacted State Redacted Zip Code: Redacted

2. The debtor was, at the time of the filing of the petition initiating this case, and still is indebted (or liable) to this claimant in the sum of \$ Unliquidated; See Addendum attached hereto

3. The consideration for this debt (or ground of liability) is as follows: See Addendum attached hereto

4. (If the claim is founded on writing.) The writing on which this claim is founded (or a duplicate thereof) is attached hereto (or cannot be attached for the reason set forth in the following statement).

N/A

5. (If appropriate,) This claim is founded on an open account, which became (or will become) due on _____, as shown by the itemized statement attached hereto. Unless it is attached hereto or its absence is explained in an attached statement, no note or other negotiable instrument has been received for the account or any part of it.

N/A

6. No judgment has been rendered on the claim except:

N/A

7. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

N/A

8. This claim is not subject to any set-off or counterclaim except:

-
9. No security interest is held for this claim except:

(If security interest in property of the debtor is claimed) The undersigned claims the security interest under the writing referred to in paragraph 4 hereof. Evidence of perfection of such security interest is also attached hereto.

10. This claim is an unsecured claim, except to the extent that the security interest, if any, described in paragraph 9 is sufficient to satisfy the claim. **It is not entitled to priority unless the reason for priority and the amount claimed as priority is set forth below.**
-

11. If claimant has obtained this claim by assignment, a copy or explanation of said assignment is attached hereto.

Name of Creditor (PRINT OR TYPE) Ruth Madoff

Signature: *Ruth Madoff* 4/30/09

Title (Corporate Officer, Partner, or Agent): _____

**IT IS A VIOLATION OF FEDERAL LAW TO FILE A FRAUDULENT CLAIM.
CONVICTION CAN RESULT IN A FINE OF NOT MORE THAN \$50,000 OR
IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR BOTH.**

**Bernard L. Madoff Investment Securities, LLC, Defendant
Bernard L. Madoff, Debtor
SIPA Liquidation Adv. Pro. No. 08-01789 (BRL)**

**Addendum to Proof of Claim
of Ruth Madoff**

Summary of Proof of Claim

Ruth Madoff ("Mrs. Madoff") asserts a contingent and unliquidated claim against Bernard L. Madoff Investment Securities, LLC, and Bernard L. Madoff (together, the "Debtors") in an unliquidated amount (this "Claim") in connection with the Actions (defined below). Mrs. Madoff has been named as a defendant in the four civil actions listed below. Mrs. Madoff asserts a contingent and unliquidated claim against the Debtors for contribution, indemnification and/or reimbursement for any and all damages she may incur, if any, in any of those four civil actions, or with respect to any other claims or actions of any kind or nature that might be filed against her in the future (the "Actions"):

1. Wexler v. Tremont Partners, Inc. et al., No. 101615/09, Supreme Court of New York, County of New York.
2. Ryan et al. v. Frichling & Horowitz, P.C. et al., No. 101616/09, Supreme Court of New York, County of New York.
3. FLB Foundation, Ltd. v. Bernard L. Madoff Investment Securities, LLC et al., No. 3746/09, Supreme Court of New York, County of Queens.
4. Retirement Program for Employees of the Town of Fairfield v. Bernard L. Madoff et al., No. FST-CV-09-5011561S, Superior Court of Connecticut, Judicial District of Stamford-Norwalk.

Mrs. Madoff expressly reserves her right to modify, amend or supplement this Claim at any time and in any respect or to assert any of the claims or any other claim as an administrative claim or other priority claim.

Mrs. Madoff submits herself to the jurisdiction of the United States Bankruptcy Court for the Southern District of New York solely for the purpose of the resolution of the claims set forth herein. Mrs. Madoff objects to the exercise of jurisdiction by the Bankruptcy Court over Mrs. Madoff or over any cases or controversies concerning Mrs. Madoff for any other purpose. Mrs. Madoff demands trial by jury on all issues so triable.

MINTZ LEVIN

John D. Bove | 212 692 6290 | jbove@mintz.com

Chrysler Center
666 Third Avenue
New York, NY 10017
212-935-3000
212-983-3115 fax
www.mintz.com

July 1, 2009

FEDERAL EXPRESS

Irving H. Picard, Esq.
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Avenue, Suite 800
Dallas, TX 75201


Re: Bernard L. Madoff Investment Securities LLC

Dear Sir or Madam:

Enclosed for filing in the above-referenced matter please find an original and a copy of a Proof of Claim on behalf of Ruth Madoff.

Please date stamp the enclosed copy and return same in the enclosed self addressed envelope. Thank you for your attention to this matter.

Sincerely,


John D. Bove
Managing Clerk

Enclosure

cc: Adrienne K. Walker, Esq.

4656112v.1

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

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PS/Ship - FedEx Label

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07.02

Page 1 of 2

From: Origin ID: 008A (212955-3000)
Jack Bore
Mike Lavan
686 Third Avenue
New York, NY 10017



SHIP TO: (212)952-6290
Irving H. Picard, Esq.
Claims Processing Center
2100 McKinney Ave Ste 800
Dallas, TX 75201-6910

BILL RENDER

SHIP DATE: 07.01.09
ACTIVITY: 113
CDO: 5455334MBUS0200
ACCOUNT: S
Delivery Address Bar Code

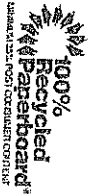
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Dept #

RELEASE#: 3785346

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EXHIBIT 2

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SECURITIES INVESTOR PROTECTION :
CORPORATION, :

Plaintiff-Applicant, :

v. :

BERNARD L. MADOFF INVESTMENT SECURITIES, :
LLC, :

Defendant. :

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

SIPA Liquidation

-----X
IN RE: :

BERNARD L. MADOFF :

Debtor. :

-----X
NOTICE OF WITHDRAWAL OF CLAIM

Pursuant to Federal Rule of Bankruptcy Procedure 3006, Ruth Madoff hereby withdraws the following Claim, more fully described herein below:

Claim Number	Date Claim Filed	Amount of Claim
100319	July 2, 2009	unliquidated

Dated: May __, 2019
New York, New York

Respectfully submitted,

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
AND POPEO, P.C.

By: _____
Peter Chavkin

666 Third Avenue
New York, NY 10017
Telephone: (212) 692-6231
PACHavkin@mintz.com

Attorneys for Ruth Madoff

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT SECURITIES,
LLC,

Defendant.
-----X

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

SIPA Liquidation

IN RE:

BERNARD L. MADOFF

Debtor.
-----X

CERTIFICATE OF MAILING

The undersigned, Peter Chavkin of Mintz, Levin, Cohn, Ferris, Glovsky & Popeo P.C., attorneys for Ruth Madoff, hereby certifies that on the ____ day of May, 2019, he caused a copy of the Notice of Withdrawal of Customer Claim to be placed in an envelope with first-class postage, prepaid, and mailed to:

David J. Sheehan
Baker & Hostetler, LLP
45 Rockefeller Plaza
New York, NY 10111
Attorneys for Irving Picard, Esq.
Trustee for the Liquidation of the
Business of Bernard L. Madoff
Investment Securities, LLC

Peter Chavkin
666 Third Avenue
New York, NY 10017
Telephone: (212) 692-6231
PACHavkin@mintz.com

EXHIBIT 3

Toyota Prius (or equivalent replacement car)

Personal clothing

Household furniture

Cartier wristwatch (owned for at least 20 years)

Costume-like jewelry

Various small electronics

Two paintings (Ruth Madoff does not own them)

Two night tables (Ruth Madoff does not own them)

EXHIBIT 2

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

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

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

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

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

Plaintiff,

v.

RUTH MADOFF,

Defendant.

Adv. Pro. No. 09-01391 (SMB)

**ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE AND
RULES 2002 AND 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE
APPROVING A SETTLEMENT BY AND BETWEEN THE TRUSTEE AND RUTH
MADOFF IN THE ABOVE-CAPTIONED PROCEEDING**

Upon the motion (“Motion”) of Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the Chapter 7 Estate of Bernard L. Madoff (“Madoff,” and together with BLMIS, collectively, the “Debtors”), seeking entry of an order pursuant to Section 105(a) of the 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 (“Settlement”) by and between the

Trustee and Ruth Madoff in the above-captioned proceeding; 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, dated May 3, 2019; [and no objection having been filed]; and it further appearing 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;

ORDERED that the Settlement between the Trustee and Ruth Madoff in the above-captioned proceeding is hereby approved and authorized;

ORDERED that the Trustee and Ruth Madoff shall each comply with and carry out the terms of the Settlement; and it is further

ORDERED that this Court shall retain jurisdiction over any and all disputes arising under or otherwise relating to this Order.

SO ORDERED.

Dated: _____, 2019
New York, New York

HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

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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**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

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

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

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

Plaintiff,

v.

RUTH MADOFF,

Defendant.

Adv. Pro. No. 09-01391 (SMB)

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 substantively consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the Chapter 7 Estate of Bernard L. Madoff (“Madoff,” and together with BLMIS, collectively, the “Debtors”). I respectfully submit this Affidavit in support of the motion seeking entry of an order pursuant to Section 105(a) of the 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 (“Settlement”) by and between the Trustee and Defendant Ruth Madoff.

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

3. I believe that the terms of the Settlement fall well above the lowest point in the range of reasonableness and, accordingly, the Settlement should be approved by the Court.

4. The Complaint against Mrs. Madoff asserts claims for the return of fraudulent transfers and other benefits received from BLMIS in excess of \$44 million, as well as claims for unjust enrichment and conversion.

5. Pursuant to a forfeiture Stipulation and Order, dated June 26, 2009, Bernard Madoff and Ruth Madoff forfeited their homes, financial holdings and other property in connection with Bernard Madoff’s criminal sentence. The United States Government agreed not to contest Mrs. Madoff’s claim to \$2.5 million and to make a payment to her in that amount following forfeiture of the Madoffs’ assets. The Forfeiture Stipulation expressly provides that the \$2.5 million payment to Mrs. Madoff “does not in any way preclude . . . Irving H. Picard,

Esq. as trustee for the liquidation of the business of defendant Bernard L. Madoff Investment Securities LLC . . . from seeking to recover the Funds from Ruth Madoff.”

6. At my request, my counsel and consultants have conducted a comprehensive investigation into Mrs. Madoff, which included, without limitation, the review and analysis of documents and communications relating to, among other things, Mrs. Madoff’s involvement with BLMIS and BLMIS-related entities, alleged transfers from BLMIS to Mrs. Madoff, the source of Mrs. Madoff’s assets, and Mrs. Madoff’s alleged use of corporate funds.

7. The Settlement is a complete resolution of all claims brought by the Trustee against Mrs. Madoff and will close a significant chapter in the Trustee’s investigation of the BLMIS fraud.

8. The terms of the Settlement are as follows:

- Mrs. Madoff shall provide the Trustee with an executed Notice of Withdrawal of Creditor Claim with Prejudice.
- Mrs. Madoff shall make an upfront cash payment to the Trustee of Two Hundred and Fifty Thousand Dollars (\$250,000.00) by bank check, wire transfer or other immediately available funds pursuant to the two-installment payment schedule set forth in the Settlement.
- Mrs. Madoff shall cause to be transferred to the Trustee proceeds of two New York State 529 accounts at Ascensus Trust owned by Mrs. Madoff for the benefit of Grandchild A and Grandchild B valued at approximately Three Hundred Forty-Four Thousand Dollars (\$344,000.00), less any applicable taxes, penalties or fees relating to the accounts.
- The proceeds of all of Mrs. Madoff’s remaining assets at the time of her death shall be transferred to the Trustee following her death through a revocable trust, over which the Trustee shall have the right to preclude any changes. Mrs. Madoff will provide the Trustee with a copy of her Last Will and Testament, the Revocable Trust Agreement, and other documents evidencing the entire transfer of her estate to the Trustee upon her death.
- The Revocable Trust created pursuant to the Settlement will be funded by accounts held by Mrs. Madoff at Stifel, Nicolaus & Company and Bank of America. Mrs. Madoff will be entitled to use the funds at such accounts to pay reasonable living and medical care expenses incurred during her lifetime.
- Mrs. Madoff shall provide an accounting to the Trustee on a semi-annual basis, which will set forth the amount of funds held in any and all accounts, the accrual of interest or

other gains, if any, and a description and purpose of any deposits or withdrawals made therein exceeding \$500.

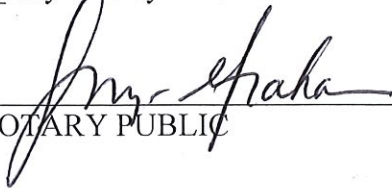
- Mrs. Madoff releases the Trustee, his respective agents, and BLMIS and its consolidated estate, on the specific terms set forth in the Settlement.
- The Trustee releases Mrs. Madoff and her respective agents on the specific terms set forth in the Settlement.
- As soon as practicable after the Effective Date, and contingent upon the Bankruptcy Court's approval of the Trustee's 9019 Motion, the Trustee will file a Notice of Dismissal dismissing the Adversary Proceeding without prejudice and without costs to either party, subject to the right to reopen the Adversary Proceeding for an uncured default under the Settlement. Upon receipt of all of the Settlement Payments, and provided that there has been no default under the Settlement, the dismissal shall convert to a dismissal with prejudice.
- Mrs. Madoff shall cooperate with the Trustee and SIPC to the extent that her assistance is requested in connection with any of the Trustee's pending litigations.

9. I recognize that litigating these claims against Mrs. Madoff in light of the limited assets and funds that she has been left with after the government forfeiture would merely reduce the amount of funds available for the victims of the fraud. Further litigating this action would also be complex, create significant delay, and involve litigation risk and difficulties associated with collection.

10. Given the potential impact of these issues, and the cost and complexities involved in proceeding with litigation, I have determined, in my business judgment, that the Settlement represents a fair and reasonable compromise of the Trustee's claims in this proceeding.

11. I respectfully submit that the Settlement should be approved (a) to avoid depleting the funds that would otherwise be available to fraud victims; (b) to avoid lengthy, costly, and burdensome litigation; and (c) because the Settlement represents a reasonable compromise of the Trustee's claims.

Sworn to before me this
3rd day of May 2019



NOTARY PUBLIC



IRVING H. PICARD

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