

Baker & Hostetler LLP

45 Rockefeller Plaza
New York, NY 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Gonzalo S. Zeballos
Michelle R. Usitalo

Hearing Date: August 8, 2019
Time: 10:00 a.m.

Objection Deadline: August 1, 2019
Time: 5:00 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**

In re:

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Debtor.

No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

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

Plaintiff,

v.

FEDERICO CERETTI, et al.,

Defendants.

Adv. Pro. No. 09-1161 (SMB)

**MOTION FOR ENTRY OF ORDER PURSUANT TO SECTION 105(a) OF THE
BANKRUPTCY CODE AND RULES 2002 AND 9019 OF THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE APPROVING A SETTLEMENT AGREEMENT BY AND
AMONG THE TRUSTEE AND KINGATE GLOBAL FUND, LTD.
AND KINGATE EURO FUND, LTD.**

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

Irving H. Picard (the “Trustee”), as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa-*lll* (“SIPA”),¹ and the substantively consolidated Chapter 7 estate of Bernard L. Madoff (“Madoff,” and together with BLMIS, the “Debtors”), by and through his undersigned counsel, submits this motion (the “Motion”) seeking entry of an order (the “Approval 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 an agreement (the “Agreement”)² by and among the Trustee and Paul Pretlove, Tammy Fu, and John C. McKenna (the “Joint Liquidators”), solely in their respective capacities as the Joint Liquidators of Kingate Global Fund, Ltd. (“Kingate Global”) and Kingate Euro Fund, Ltd. (“Kingate Euro” and, together with Kingate Global, the “Kingate Funds”), both of which are British Virgin Islands (“BVI”) companies (each of the Trustee and the Joint Liquidators a “Party” and collectively, the “Parties”). In support of the Motion, the Trustee respectfully represents as follows:

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

² The form of Agreement is attached hereto as Exhibit “A.”

PRELIMINARY STATEMENT

The Kingate Funds were two of the largest BLMIS customers investing more than \$1.7 billion over a period of 14 years and were solely invested with BLMIS for nearly that entire period. During that same 14-year period, the Kingate Funds withdrew \$926,351,905.48 from BLMIS (the “Lifetime Transfers”). Following Madoff’s arrest and commencement of the SIPA liquidation proceeding of BLMIS, the Kingate Funds also went into liquidation in the BVI.

The Kingate Funds were named as defendants, along with their principals and service providers, in the above-captioned adversary proceeding that seeks to avoid and recover the Lifetime Transfers (the “Adversary Proceeding”). The Parties engaged in extensive discovery over a four year period, which involved the production and review of over one million documents, the examination of 22 witnesses both domestically and abroad, and thorough written discovery.

The Agreement represents a good faith, complete settlement of all disputes between the Trustee and the Kingate Funds and the customer claims the Kingate Funds submitted in connection with BLMIS Account Nos. 1FN061 and 1FN086. The settlement will benefit the customer property fund by \$860,000,000 (the “Settlement Payment”) and represents 100% of the Six Year Transfers³ of \$825,000,000 and approximately 93% of the Lifetime Transfers of \$926,351,905. The Trustee therefore respectfully requests that the Court approve this settlement.

³ Terms not otherwise defined in the Motion shall have the meaning ascribed to them in the Agreement. In the event of any inconsistency between the Motion and the Agreement, the Agreement controls.

BACKGROUND

1. On December 11, 2008 (the “Filing Date”)⁴, the Securities and Exchange Commission (the “SEC”) filed a complaint in the United States District Court for the Southern District of New York (the “District Court”) against the Debtors (Case No. 08 CV 10791). In the complaint, the SEC alleged that the Debtors engaged in fraud through the investment advisor activities of BLMIS.

2. 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.

3. On that date, the District Court entered the Protective Decree, to which BLMIS consented, which, in pertinent part:

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

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

⁴ In this case, the Filing Date is the date on which the SEC commenced its suit against BLMIS and a receiver was appointed for BLMIS. *See* SIPA § 78III(7)(B).

THE TRUSTEE'S CLAIMS AGAINST THE KINGATE FUNDS

5. Kingate Global was a customer of BLMIS and opened a direct customer account 1FN061 in 1994 (the "Kingate Global Account"). Kingate Global withdrew a total of \$398,797,047 from the Kingate Global Account ("Global Lifetime Transfers"). Of the Global Lifetime Transfers, approximately \$360,000,000 was transferred during the six years preceding the Filing Date, and approximately \$150,000,000 was transferred during the two years preceding the Filing Date.

6. Kingate Euro was a customer of BLMIS and maintained a customer account 1FN086 (the "Kingate Euro Account"). The Kingate Euro Account was originally opened in 1996 as a sub-fund of Kingate Global. Kingate Euro withdrew from the Kingate Euro Account a total of \$527,554,858 (the "Euro Lifetime Transfers"). Of the Euro Lifetime Transfers, approximately \$465,000,000 was transferred during the six years preceding the Filing Date, and approximately \$245,000,000 was transferred during the two years preceding the Filing Date.

7. Pursuant to an Order entered on June 4, 2009, the BVI Court (i) permitted the winding up of Kingate Global in accordance with the BVI Insolvency Act 2003, and (ii) appointed William Tacon and Richard Fogerty as the Joint Liquidators for Kingate Global.

8. Pursuant to a separate Order entered on June 4, 2009, the BVI Court (i) permitted the winding up of Kingate Euro in accordance with the BVI Insolvency Act 2003, and (ii) appointed William Tacon and Richard Fogerty as the Joint Liquidators for Kingate Euro.

9. On September 4, 2009, the Supreme Court of Bermuda granted the Kingate Funds' petitions to be wound up under the provisions of the Companies Act 1981 [Bermuda] and on October 5, 2010, appointed Mr. Tacon, Mr. McKenna and Mr. Fogerty as Joint Liquidators.

10. By separate orders of the BVI Court dated March 6, 2012, upon the resignation of Mr. Fogerty, the BVI Court appointed Mr. Stuart C. E. Mackellar to act as a Liquidator in his

place. On July 25, 2012, the Bermuda Court appointed Mr. Mackellar to act as a Liquidator of the Kingate Funds in place of Mr. Fogerty, to act jointly in Bermuda with Mr. McKenna and Mr. Tacon. On March 12, 2014, the BVI Court appointed Mr. Hopkins in place of Mr. Tacon. On April 29, 2016, the BVI Court appointed Mr. Pretlove in place of Mr. Hopkins. On July 15, 2016, the Bermuda Court appointed Mr. Pretlove in place of Mr. Hopkins. On March 9, 2018, the BVI Court appointed Ms. Fu in place of Mr. Mackellar. On May 11, 2018, the Bermuda Court appointed Ms. Fu in place of Mr. Mackellar.

11. On or about April 17, 2009, the Trustee commenced the Adversary Proceeding, which, as set forth above, was later amended, most recently by the Fourth Amended Complaint filed on March 17, 2014, under the caption *Picard v. Ceretti, et al.*, Adv. Pro. No. 09-1161 (SMB). In the Adversary Proceeding, the Trustee asserts that the Kingate Funds, as initial transferees, are liable to the BLMIS estate under sections 544, 547, 548, 550, 551 of the Bankruptcy Code, SIPA § 78fff-2(c)(3), the New York Fraudulent Conveyance Act (New York Debtor and Creditor Law (“NY DCL”) §§ 273-279) and the New York Civil Procedures Law for the Lifetime Transfers (the “Avoidance Claims”). Specifically, the Adversary Proceeding seeks, *inter alia*, to avoid and recover the Lifetime Transfers from the Kingate Funds in an aggregate amount totaling \$926,351,905. In addition, the Adversary Proceeding seeks to disallow and equitably subordinate the Kingate Funds’ customer claims.

12. The Trustee’s Adversary Proceeding also asserts claims against Federico Ceretti, Carlo Grosso, Kingate Management Limited, FIM Advisers LLP, FIM Limited, First Peninsula Trustees Limited, the Ashby Trust, Ashby Investment Services Limited, Alpine Trustees Limited, Port of Hercules Trustees Limited, El PreLa Trust, El PreLa Group Holding Services, Ashby Holdings Services Limited, El PreLa Trading Investments Limited, Citi Hedge Fund Services

Limited, and HSBC Bank Bermuda (collectively, the “Subsequent Transferee Defendants”). The Trustee’s claim against the Subsequent Transferee Defendants seeks to recover the subsequent transfers of the Lifetime Transfers under sections 550(a) and 551 (the “Subsequent Transferee Claims”).

13. On July 18, 2014, the Kingate Funds moved to dismiss the Complaint. By Order dated August 11, 2015, Judge Bernstein denied the motion to dismiss with respect to all counts except Count X (disallowance under section 502(a)) and Count XII (equitable disallowance).⁵

14. On September 30, 2015, the Joint Liquidators, on behalf of the Kingate Funds filed an Answer disputing liability to the Estate under all counts of the Complaint, except that the Liquidators have consented to the avoidance of the Lifetime Transfers under the terms of the Agreement.

15. On January 5, 2015, the Subsequent Transferee Defendants moved to dismiss the Trustee’s Subsequent Transferee Claims on the grounds that the U.S. Bankruptcy Code lacks extraterritorial application. By Order dated November 22, 2016, Judge Bernstein granted the motion with respect to the Subsequent Transferee Defendants.⁶ The Trustee appealed, and on February 25, 2019, the Second Circuit vacated the Extraterritoriality Decision and remanded to the Bankruptcy Court for further proceedings.⁷ The Subsequent Transferee Defendants filed a Petition for Panel Rehearing and Rehearing En Banc, which was denied on April 3, 2019. The Subsequent Transferee Defendants expressed their intention to file a petition for a writ of certiorari before the Supreme Court.

⁵ See *Picard v. Ceretti (In re Bernard L. Madoff Inv. Sec. LLC)*, Adv. Pro. No. 09-01161 (SMB), 2015 WL 473479, at *1 (Bankr. S.D.N.Y. Aug. 11, 2015) (ECF No. 199) (“Motion to Dismiss Order”).

⁶ *SIPC v. BLMIS (In re BLMIS)*, No. 08-01789, 2016 WL 6900689 (Bankr. S.D.N.Y. Nov. 22, 2016) (the “Extraterritoriality Decision”).

⁷ See *In re Picard*, No. 17-2992(L), Main ECF Nos. 1312, 1317 (2d Cir. Feb. 25, 2019).

THE KINGATE FUNDS' CLAIMS AGAINST THE BLMIS ESTATE

16. The Joint Liquidators, on behalf of the Kingate Funds, timely filed customer claim numbers 15358, on behalf of Kingate Euro, and 15359, on behalf of Kingate Global in the SIPA Proceeding (the "Kingate Claims") alleging aggregate net losses of \$869,699,162.81 for Kingate Euro and \$3,178,668,366.51 for Kingate Global purportedly based upon the Kingate Funds' BLMIS account statements as of November 30, 2008. The Trustee and the Joint Liquidators acknowledge that the calculation of the alleged losses, as set forth in the Kingate Claims, contained errors, and the correct calculation of Kingate Euro's and Kingate Global's alleged losses based on the customer statements issued by BLMIS for the period ending November 30, 2008, are \$734,956,540 and \$2,714,140,694.

17. The Second Circuit confirmed the Trustee's method of determining claims using the net equity calculation. The aggregate amount of the Kingate Funds' net losses based upon the net equity calculation is \$750,558,271. Pursuant to a settlement between the Trustee and the United States of America acting on behalf of the Internal Revenue Service, the Trustee adjusted the Kingate Funds' aggregate net equity calculation to \$799,748,094.52 (the "Kingate Funds Net Equity Claim").

SETTLEMENT DISCUSSIONS AND TRUSTEE'S INVESTIGATION

18. In the past several years, the Parties have, on multiple occasions, engaged in good faith discussions aimed at resolving the Trustee's Avoidance Claims and the Kingate Funds Net Equity Claim. These discussions proved unsuccessful, in part, because the Trustee's investigation of the Kingate Funds' principals and service providers was ongoing and the District Court issued opinions that affected the pleading standards for the Trustee's Avoidance Claims.

19. Following this Court's Motion to Dismiss Order and the Kingate Funds' Answer, the Parties engaged in extensive fact discovery that continued for four years. During fact

discovery the Trustee and the Joint Liquidators produced approximately 603,000 and 697,000 documents, respectively. The Trustee also received and reviewed hundreds of thousands of documents from third parties. Furthermore, the Trustee elicited the testimony of over 22 witnesses through subpoenas issued pursuant to Federal Rule of Civil Procedure 45 and through Hague Requests and Letters Rogatory issued in the United Kingdom, Bermuda, Ireland, and France.

20. Following fact discovery, the Parties agreed to participate in a private, non-Court ordered mediation pursuant to protocols and procedures set forth in a letter agreement between the Parties. The Parties actively engaged in mediation, including exchanging mediation statements, and participating in several formal in-person sessions with the mediator and each other. Through the mediation process, the Parties reached a compromise, and, in light of the delay, expense, and uncertainties associated with litigation, have decided to settle the Adversary Proceeding.

OVERVIEW OF THE AGREEMENT

21. The principal terms and conditions of the Agreement are generally, as follows (as stated above, the Agreement is attached as Exhibit A and should be reviewed for a complete account of its terms):

a) The Kingate Funds shall pay the Trustee \$860,000,000, which constitutes a 100% recovery of the Kingate Two Years Transfers, a 100% recovery of the Kingate Six Year Transfers, and a 93% recovery of the Lifetime Transfers.

b) Upon satisfaction of all the conditions to Closing or waiver by the applicable party as stated in the Agreement, the Kingate Funds will have an allowed claim in the SIPA Proceeding in the amount of \$1,659,748,094.52 (the "Allowed Claim") and shall be entitled to the full benefit of a SIPC customer advance under SIPA section 78fff-3(a). The

Allowed Claim is equal to the Kingate Funds Net Equity Claim of \$799,748,094.52, plus an increase of \$860,000,000 under section 502(h) of the Bankruptcy Code.

c) The Parties acknowledge that the Joint Liquidators are obligated to make distributions to the Kingate Funds' creditors and shareholders in accordance with BVI law. The Parties also acknowledge the Trustee's desire to maximize returns to the allowed claims of good faith customers of BLMIS. The Parties agree to cooperate, to the extent allowed by BVI law and permitted by the BVI Court, to restrict distributions to certain of the Kingate Funds' creditors and shareholders in accordance with the protocol set out in the Agreement.

d) The Trustee will enter into mutual release agreements with each of the Subsequent Transferee Defendants in the form attached as Annex D to the Agreement thus resolving all claims in the Adversary Proceeding.

e) The Trustee will release, acquit, and absolutely discharge the Kingate Funds on the specific terms set forth in the Agreement.

f) The Kingate Funds will release, acquit, and absolutely discharge the Trustee and all his agents and BLMIS and its consolidated estate, on the specific terms set forth in the Agreement.

g) The Trustee will dismiss with prejudice the actions listed in Annex B to the Agreement.

h) The Closing will occur no later than the fifth business day after satisfaction or waiver (by the party in whose favor such condition is for) of the conditions to the Closing as set forth in the Agreement.

22. The Agreement is subject to the approval of both this Court presiding over the SIPA liquidation proceeding of BLMIS and the substantively consolidated Chapter 7 Madoff

estate, the BVI court presiding over the BVI proceedings and the Bermuda court presiding over the Bermuda proceedings. Hearings before the BVI court and Bermuda court to consider approval of the Agreement will be scheduled as soon as practicable. Any stakeholder of the Kingate Funds seeking information regarding those proceedings should contact Nicholas Fox with the firm of Mourant Ozannes c/o Osiris, Coastal Buildings, Wickham's Cay II, PO Box 4857, Road Town, Tortola, British Virgin Islands, telephone +1 284 852 1700, representing the Joint Liquidators. If the Bankruptcy Court and/or the BVI Court have not entered a final order approving the Agreement within one hundred and fifty (150) days after the later date of (i) the date of the Agreement and (ii) the date the Trustee files a motion with the Bankruptcy Court to approve the Agreement, then, in the Trustee's discretion, upon written notice to the other parties to the Agreement, the Agreement will terminate and be null and void.

RELIEF REQUESTED

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

LEGAL DISCUSSION

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

25. The Second Circuit has stated that a bankruptcy court, in determining whether to approve a compromise, should not decide the numerous questions of law and fact raised by the

compromise, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” *Cosoff v. Rodman (In re W. T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (internal citations omitted); *see also Masonic Hall & Asylum Fund v. Official Comm. of Unsecured Creditors (In Refco, Inc.)*, 2006 U.S. Dist. LEXIS 85691, at *21-22 (S.D.N.Y. Nov. 16, 2006); *In re Ionosphere Clubs*, 156 B.R. at 426 (“[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).

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

- (a) the probability of success in the litigation;
- (b) the difficulties associated with collection;
- (c) the complexity of the litigation, and the attendant expense, inconvenience, and delay; and
- (d) the paramount interests of the creditors (or in this case, customers).

In re Refco, Inc., 2006 U.S. Dist. LEXIS 85691 at *22; *Nellis v. Shugrue*, 165 B.R. 115, 122 (S.D.N.Y. 1994) (citing *In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 292 (2d Cir. 1992), *cert. denied*, 506 U.S. 1088 (1993)).

27. The bankruptcy court may credit and consider the opinions of the trustee or debtor and their counsel in determining whether a settlement is fair and equitable. *See In re Purified Down Prods.*, 150 B.R. at 522; *In re Drexel Burnham Lambert Grp.*, 134 B.R. at 505. Even though the Court has discretion to approve settlements and must independently evaluate the reasonableness of the settlement, *In re Rosenberg*, 419 B.R. 532, 536 (Bankr. E.D.N.Y. 2009), the business judgment of the trustee and his counsel should be considered in determining whether a settlement is fair and equitable. *In re Chemtura Corp.*, 439 B.R. 561, 594 (Bankr.

S.D.N.Y. 2010). The competency and experience of counsel supporting the settlement may also be considered. *Nellis*, 165 B.R. at 122. Finally, the court should be mindful of the principle that “the law favors compromise.” *In re Drexel Burnham Lambert Grp., Inc.*, 134 B.R. at 505 (quoting *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976)).

28. The Agreement furthers the interest of BLMIS customers by (a) adding \$860,000,000 to the fund of customer property, and (b) recovering 93% of the Lifetime Transfers and 100% of the Six Year Transfers.

29. Furthermore, the Agreement resolves all claims among the Parties and avoids the cost and delay of what could otherwise be lengthy and contentious litigation. *See* Declaration of the Trustee in Support of the Motion attached hereto as Exhibit C.

30. In sum, the Trustee submits that the Agreement should be approved to avoid lengthy, burdensome, and expensive litigation and because it represents a fair and reasonable compromise of the Avoidance Claims and the Customer Claims. Because the Agreement is well within the “range of reasonableness” and confers a benefit on the estate, the Trustee respectfully requests that the Court enter an Order approving the Agreement.

NOTICE

31. In accordance with Bankruptcy Rules 2002 and 9019, 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) Gary S. Lee, Esq., Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10109. Notice of this Motion will also be provided via e-mail and/or U.S. Mail to all persons who have filed notices of appearance in the BLMIS proceeding and to all defendants in this adversary proceeding pursuant to the Order Establishing Noticing Procedures and Limiting Notice, ECF No. 4560. The Trustee submits that no other or further notice is required.

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

Dated: July 17, 2019
New York, NY

/s/ David J. Sheehan
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Gonzalo S. Zeballos
Michelle R. Usitalo

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

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
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Hearing Date: August 8, 2019 at 10 a.m.
Objection Deadline: August 1, 2019

*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**

<p>SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.</p>	<p>Adv. Pro. No. 08-01789 (SMB) SIPA LIQUIDATION (Substantively Consolidated)</p>
<p>In re: BERNARD L. MADOFF, Debtor.</p>	
<p>IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. FEDERICO CERETTI, et al., Defendants.</p>	<p>Adv. Pro. No. 09-01161 (SMB)</p>

**NOTICE OF MOTION FOR ENTRY OF ORDER PURSUANT TO
SECTION 105(a) OF THE BANKRUPTCY CODE AND RULES 2002
AND 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE
APPROVING A SETTLEMENT AGREEMENT BY AND AMONG
THE TRUSTEE AND KINGATE GLOBAL FUND, LTD.
AND KINGATE EURO FUND, LTD.**

PLEASE TAKE NOTICE that Irving H. Picard (the “Trustee”), as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–*lll*, and the substantively consolidated Chapter 7 estate of Bernard L. Madoff, by and through his undersigned counsel, will move before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge, at the United States Bankruptcy Court, the Alexander Hamilton Customs House, One Bowling Green, New York, New York 10004, on August 8, 2019 at 10:00 a.m., or as soon thereafter as counsel may be heard, seeking entry of an order, pursuant to section 105(a) of the United States Bankruptcy Code and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, approving the settlement agreement by and among the Trustee and Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd., as more particularly set forth in the motion annexed hereto (the “Motion”).

PLEASE TAKE FURTHER NOTICE that written objections to the Motion must be filed with the Clerk of the United States Bankruptcy Court, One Bowling Green, New York, New York 10004 by no later than **5:00 p.m. on August 1, 2019** (with a courtesy copy delivered to the Chambers of the Honorable Stuart M. Bernstein) and must be served upon (a) Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, New York 10111, Attn: David J. Sheehan, Esq.; (b) Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10109, Attn: Gary S. Lee, Esq.; and (c) Securities Investor Protection Corporation, 1667 K Street, N.W., Suite 1000, Washington D.C. 20006, Attn: Kevin Bell, Esq. Any objections must specifically state the interest that the objecting party has in these proceedings and the specific basis of any objection to the Motion.

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

Dated: New York, New York
July 17, 2019

Respectfully submitted,

BAKER & HOSTETLER LLP

By: s/ David J. Sheehan

David J. Sheehan

Email: dsheehan@bakerlaw.com

Gonzalo S. Zeballos

Email: gzeballos@bakerlaw.com

Michelle R. Usitalo

Email: musitalo@bakerlaw.com

45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201

*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

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT, dated as of June 26, 2019 (together with the related agreements referenced herein, as applicable, the “Settlement Agreement”), is made by and among IRVING H. PICARD, in his capacity as trustee (the “Trustee”) under the Securities Investor Protection Act of 1970, 15 U.S.C. §§ 78aaa *et seq.*,¹ as amended (“SIPA”), for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the substantively consolidated Chapter 7 estate of Bernard L. Madoff (“Madoff”), and PAUL PRETLOVE, TAMMY FU, and JOHN C. MCKENNA, in their capacity as joint liquidators (together with any successor liquidator, the “Liquidators”) of KINGATE GLOBAL FUND, LTD. (“Kingate Global”) and KINGATE EURO FUND, LTD. (“Kingate Euro”) (each of the Trustee and the Liquidators a “Party” and collectively, the “Parties”).

RECITALS

A. BLMIS and its predecessors were registered broker-dealers and members of the Securities Investor Protection Corporation (“SIPC”).

B. On December 11, 2008 (the “Filing Date”), the Securities and Exchange Commission (the “SEC”) filed a complaint in the United States District Court for the Southern District of New York (the “District Court”) against BLMIS and Madoff.

C. On December 15, 2008, pursuant to section 78eee(a)(4)(A) of SIPA, the SEC consented to a combination of its own action with an application by 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 SIPC’s application and entered an order, which, in pertinent part, appointed the Trustee 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 (No. 08-01789 (SMB)) (the “SIPA Proceeding”). The Trustee is duly qualified to serve and act on behalf of BLMIS’s and Madoff’s substantively consolidated estate (the “Estate”).

D. 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. At a plea hearing on March 12, 2009, in the case captioned *United States v. Madoff*, Case No. 09-CR-213(DC), Madoff pleaded guilty to an 11-count criminal information filed against him by the United States Attorney’s Office for the Southern District of New York and admitted that he “operated a Ponzi scheme through the investment advisory side of [BLMIS]” and engaged in fraud in the operation of BLMIS.

E. Kingate Global and Kingate Euro (together, the “Kingate Funds”) were incorporated in the British Virgin Islands (“BVI”) on February 11, 1994 and April 19, 2000,

¹ Citations to sections of SIPA shall hereinafter omit reference to title 15.

respectively. The Kingate Funds provided a vehicle for investing cash collected from numerous investors with BLMIS.

F. By separate orders dated June 4, 2009, the Eastern Caribbean Supreme Court in the High Court of Justice of the Virgin Islands (the “BVI Court”), in accordance with the BVI Insolvency Act, 2003, appointed Mr. William R. Tacon and Mr. Richard E. F. Fogerty as joint liquidators of the Kingate Funds, each having the right to exercise all functions and powers held jointly. On September 4, 2009, the Supreme Court of Bermuda (the “Bermuda Court”) granted the Kingate Funds’ petitions to be wound up under the provisions of the Companies Act 1981 [Bermuda] and on October 5, 2010, appointed Mr. Tacon, Mr. McKenna and Mr. Fogerty as joint liquidators of the Kingate Funds in Bermuda (they having been appointed provisional liquidators by the order of the Bermuda Court dated September 4, 2010). By separate orders of the BVI Court dated March 6, 2012, upon the resignation of Mr. Fogerty, the BVI Court appointed Mr. Stuart C. E. Mackellar to act as a Liquidator in his place. On July 25, 2012, the Bermuda Court appointed Mr. Mackellar to act as a Liquidator of the Kingate Funds in place of Mr. Fogerty, to act jointly in Bermuda with Mr. McKenna and Mr. Tacon. On March 12, 2014, the BVI Court appointed Mr. Hopkins in place of Mr. Tacon. On April 29, 2016, the BVI Court appointed Mr. Pretlove in place of Mr. Hopkins. On July 15, 2016, the Bermuda Court appointed Mr. Pretlove in place of Mr. Hopkins. On March 9, 2018, the BVI Court appointed Ms. Fu in place of Mr. Mackellar. On May 11, 2018, the Bermuda Court appointed Ms. Fu in place of Mr. Mackellar.

G. Kingate Global was a customer of BLMIS and maintained customer account number 1-FN061 (the “Kingate Global Account”), commencing as of March 1994.

H. Kingate Global also maintained customer account number 1-FN086 (the “Kingate Euro Account”), commencing in January 1996 when the Kingate Euro Account was opened as a sub-fund of the Kingate Global Account. The Kingate Euro Account was transferred to Kingate Euro in May 2000, when Kingate Euro became a customer of BLMIS. The Kingate Euro Account and the Kingate Global Account are together referred to as the “Kingate Accounts.”

I. From the opening of the Kingate Accounts to the Filing Date, the Kingate Funds withdrew from the Kingate Accounts \$926,351,905.48 from BLMIS (the “Lifetime Transfers”).

J. In the six years prior to the Filing Date, the Kingate Funds withdrew from the Kingate Accounts \$825,000,000.

K. The Liquidators, on behalf of the Kingate Funds, timely filed customer claim numbers 15358, on behalf of Kingate Euro, and 15359, on behalf of Kingate Global, in the SIPA Proceeding (each a “Customer Claim” and, collectively, the “Customer Claims”) alleging aggregate net losses of \$869,699,162.81 for Kingate Euro and \$3,178,668,366.51 for Kingate Global purportedly based upon the Kingate Accounts’ customer statements issued by BLMIS for the period ending November 30, 2008. The Trustee and the Liquidators acknowledge that the alleged losses, as set forth in the Customer Claims, contained errors, and the correct calculation of Kingate Euro’s and Kingate Global’s alleged losses based on the customer statements issued by BLMIS for the period ending November 30, 2008, are \$734,956,540 and \$2,714,140,694, respectively (the “Last Statement Amounts”).

L. The Trustee disputed that the Kingate Funds are entitled to allowance of the Customer Claims based upon the Last Statement Amounts. On March 1, 2010, The Honorable Burton R. Lifland, United States Bankruptcy Judge, issued an opinion affirming the Trustee's "net equity" calculation of customer claims as the difference between investment into BLMIS and amounts withdrawn (the "Net Investment Method"). On August 16, 2011, the United States Court of Appeals for the Second Circuit upheld the Trustee's use of the Net Investment Method, and on June 25, 2012, the United States Supreme Court denied petitions for certiorari, thereby upholding the Trustee's methodology.

M. Kingate Global's net loss based upon the Net Investment Method is \$540,158,887.54. Kingate Euro's net loss based upon the Net Investment Method is \$210,399,382.69. The aggregate amount of Kingate Global's and Kingate Euro's net losses based upon the Net Investment Method is \$750,558,270.23. The claims of each of the Kingate Funds have benefited from a settlement between the Trustee and the United States of America acting on behalf of the Internal Revenue Service approved by order of the Bankruptcy Court dated December 21, 2011 ("IRS Settlement"). Pursuant to the IRS Settlement, the Trustee adjusted Kingate Global's net loss to \$578,862,952.73, and Kingate Euro's net loss to \$220,885,141.79, with aggregate net losses of \$799,748,094.52.

N. The Trustee commenced an adversary proceeding against the Kingate Funds as initial transferees, and Federico Ceretti, Carlo Grosso, Kingate Management Limited, FIM Advisers LLP, FIM Limited, First Peninsula Trustees Limited, individually and as Trustee of the Ashby Trust, the Ashby Trust, Ashby Investment Services Limited, Alpine Trustees Limited, individually and as Trustee of El Praela Trust, Port of Hercules Trustees Limited, individually and as Trustee of El Praela Trust, El Praela Trust, El Praela Group Holding Services, Ashby Holdings Services Limited, and El Praela Trading Investments Limited (collectively, the "KML Defendants"), Citi Hedge Fund Services Limited (now doing business as SS&C Fund Services (Bermuda) Ltd.) ("CitiHedge" and, together with the KML Defendants, the "Subsequent Transferee Defendants"),² and HSBC Bank Bermuda Limited ("HSBC Bank Bermuda"), as subsequent transferees, now titled *Picard v. Federico Ceretti, et al.*, Adv. Pro. No. 09-01161 (SMB) ("Kingate Proceeding"). On March 17, 2014, the Trustee filed his Fourth Amended Complaint in the Kingate Proceeding ("Complaint"), asserting claims against the Kingate Funds to avoid and recover the Lifetime Transfers under 11 U.S.C. §§ 544, 547, 548, 550 and 551,³ the New York Uniform Fraudulent Conveyance Act (New York Debtor and Creditor Law §§ 273–279), the New York Civil Procedure Law, and section 78fff-2(c)(3) of SIPA. The Trustee's claims described in this paragraph are collectively referred to as the "Avoidance Claims."

² The Trustee listed El Praela Group Holding Services, Ashby Holdings Services Limited, El Praela Trust, Alpine Trustees Limited, individually and as Trustee of El Praela Trust, and Port of Hercules Trustees Limited, individually and as Trustee of El Praela Trust, as defendants. The proper names of those entities are, respectively, El Praela Group Holding Services Limited, Ashby Holding Services Limited, the El Praela Trust, Alpine Trustees Limited, individually and as Trustee of the El Praela Trust, and Port of Hercules Trustees Limited, individually and as Trustee of the El Praela Trust (the "Properly Named Entities"). The term Subsequent Transferee Defendants includes the Properly Named Entities.

³ Citations to sections of the Bankruptcy Code (11 U.S.C. §§ 101 *et seq.*) shall hereinafter omit reference to title 11.

O. In addition to the Avoidance Claims, by his Complaint, the Trustee also seeks to disallow and equitably subordinate the Kingate Funds' Customer Claims (the "Disallowance and Subordination Claims").

P. As alleged in the Complaint, the Trustee also asserts claims against the Subsequent Transferee Defendants and HSBC Bank Bermuda to recover the subsequent transfers of the Lifetime Transfers under sections 550(a) and 551 and New York Debtor Creditor Law § 278 (the "Subsequent Transferee Claims").

Q. On July 18, 2014, the Kingate Funds moved to dismiss the Complaint. By Order dated August 11, 2015, Judge Bernstein denied the motion to dismiss with respect to all counts except Count X (disallowance under 11 U.S.C. § 502(a)) and Count XII (equitable disallowance).

R. On September 30, 2015, the Liquidators, on behalf of the Kingate Funds, filed an Answer disputing liability to the Estate under all counts of the Complaint, except that the Liquidators admit that the Lifetime Transfers constitute avoidable transfers within the meaning of sections 544, 547, 548, 550 and 551 of the Bankruptcy Code, New York Debtor and Creditor Law §§ 273–279, New York Civil Procedure Law and section 78fff-2(c)(3) of SIPA, as applicable. Except as set forth in this Recital R and elsewhere in this Settlement Agreement, none of the allegations in the Complaint shall be, or argued to be, binding on, or admissible against, the Liquidators or the Kingate Funds in any proceeding, action, petition, or other process.

S. Since 2015, the Parties have engaged in extensive document and testimonial discovery on the Trustee's claims and the Liquidators' defenses ("Fact Discovery").

T. Following the conclusion of Fact Discovery, the Parties have engaged in mediation to resolve their disputes without the expense, delay and uncertainty of continuing the litigation about the matters described above. The Parties have determined to settle and resolve all of the disputes, claims, actions, defenses or liabilities (whether or not asserted) between them, subject to the terms and conditions specified below.

U. The Trustee and the Liquidators each have fiduciary duties in their respective roles, and the terms and conditions of the settlement have been negotiated consistent with those fiduciary duties, and the Trustee and the Liquidators each recognize and acknowledge that their rights and obligations hereunder shall be exercised in accordance with those duties.

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

AGREEMENT

1. Recitals. The foregoing Recitals are incorporated into, and are a material part of, this Settlement Agreement.
2. Avoidance of Transfers. The Liquidators agree that the Lifetime Transfers are avoided, and thus recoverable by the Trustee under sections §§ 550(a) and 551; provided, however, that the Trustee will neither assert any new claims nor seek recovery on previously filed claims against any subsequent transferee based on transfers initially made to the Kingate Funds.
3. Settlement Payment. At the Closing (as defined in paragraph 16), in consideration of the releases by the Trustee set forth herein, the Kingate Funds shall pay or cause to be paid to the Trustee, pursuant to the conveyances, assignments, endorsements, and transfers set forth in paragraph 5, the sum of \$860,000,000 ("Settlement Payment") in full and final settlement and satisfaction of the Avoidance Claims, the Disallowance and Subordination Claims, the Subsequent Transferee Claims, and any claims the Trustee or the BLMIS estate may have against the Kingate Funds as identified in paragraph 13 herein, or against the Subsequent Transferee Defendants and HSBC Bank Bermuda as identified in paragraph 17(f) and Annex D.
4. Allowance of Kingate Funds' Customer Claims. On the Closing Date, the Kingate Funds shall have an allowed "net equity" claim pursuant to section 78III(11) of SIPA, in the amount of \$799,748,094.52, which the Trustee has determined in accordance with the Net Investment Method, adjusted to account for certain tax withholdings ("Kingate Funds' Net Equity Claim"). The Kingate Funds' Net Equity Claim shall be increased by the amount of \$860,000,000.00, pursuant to section 502(h) of the Bankruptcy Code for a total allowed Customer Claim of \$1,659,748,094.52 (the "Kingate Funds' Allowed Claim"). The Kingate Funds' Allowed Claim shall be equal in priority to all other allowed customer claims against the Estate and shall share ratably in all distributions made by the Trustee from the Estate. The Trustee shall issue a letter of determination with respect to the Kingate Funds' Allowed Claim, in the form attached hereto as Annex A (the "Kingate Funds' Letter of Determination"), which letter of determination shall automatically go into effect upon the Closing and be final, binding, and irrevocable.
5. Funding of Settlement Payment. At the Closing, the Kingate Funds are entitled to payment on the Kingate Funds' Allowed Claim as follows:
 - (a) first, the SIPC customer advance provided for under section 78fff-3(a) of SIPA applicable to each customer of the Kingate Funds' Allowed Claim in the aggregate amount of \$1,000,000.00 ("SIPC Advances"); and
 - (b) next, the *pro rata* interest of the Kingate Funds' Allowed Claim in all interim distributions made by the Trustee to allowed claims from funds allocated to customer property on or prior to the Closing Date (as defined in paragraph 16) (collectively, the "Catch-Up Payment"). As of the date of this Settlement Agreement, the Catch-Up Payment equals

\$1,105,939,947.82, which represents 66.633% of the Kingate Funds' Allowed Claim.

- (c) Effective upon the Closing Date (as defined in paragraph 16), the Liquidators hereby convey, assign, endorse and transfer to the Trustee the SIPC Advances and the Catch-Up Payment in an amount equal to the Settlement Payment.
- (d) The remainder payment of \$246,939,947.82 will be distributed to the Liquidators on the Closing Date.

6. Discontinuance of Actions. Within 10 business days after the Closing Date, the Trustee shall discontinue the actions listed in Annex B (the "Actions") on terms that there be no orders for costs and all parties to the Actions bear their own costs and forever waive any right to seek a costs order against any other party. The Actions shall be dismissed with prejudice.

7. Restricted Distributions. The Parties acknowledge that the Liquidators are obligated to make distributions to the Kingate Funds' creditors and shareholders, including redeemed and continuing investors, in accordance with BVI law. The Parties also acknowledge the Trustee's desires to maximize returns to the allowed claims of good faith customers of BLMIS. The Parties agree to cooperate, to the extent allowed by BVI law and permitted by the BVI Court, to seek to determine distributions to certain of the Kingate Funds' creditors and shareholders (the "Restricted Parties") in accordance with following protocol:

- (a) Entities and Individuals Identified on Annex C: The Trustee has listed on Annex C certain entities and individuals that the Trustee considers should not be entitled to recover from the Estate.
 - i. The Liquidators will not make any distributions from the Kingate Funds' Allowed Claim to any of the individuals and entities set forth on Annex C to this Settlement Agreement, unless otherwise ordered by the BVI Court.
 - ii. If a creditor or shareholder of the Kingate Funds is identified as a nominee or custodian, and that nominee or custodian represents to the Liquidators that (A) some or all of its underlying account holders are not entities or individuals identified on Annex C to this Settlement Agreement and (B) they will use distributions from the Kingate Funds solely to pay "non-Annex C" account holders, then the Liquidators shall be entitled to make distributions to that nominee or custodian, in respect of those underlying "non-Annex C" account holders.

8. Madoff Victim Fund (“MVF”) Recipients: The MVF is a fund operated by the U.S. Department of Justice (“DOJ”) pursuant to 28 C.F.R. Part 9 and is comprised of recoveries gathered through various criminal and civil forfeiture actions. The MVF makes distributions on claims belonging to customers without a BLMIS account. The Parties are aware that the MVF has made or will make distributions to BLMIS customers without an account, which may include certain of the Kingate Funds’ creditors or shareholders. The Liquidators, to the extent allowed by BVI law and permitted by the BVI Court, shall:

- (a) as part of the claims adjudication process, seek to require Kingate Funds’ shareholders and creditors to disclose any monies received from the MVF (“MVF Receipts”); and
- (b) when making distributions from the Kingate Funds’ estates, seek to take into account any MVF Receipts disclosed to them pursuant to paragraph 8(a) above so that no Kingate Fund creditor or shareholder receives a double recovery from the MVF and the Kingate Funds’ estates from funds received on account of the Kingate Funds’ Allowed Claim.

9. Cash in HSBC Bank Bermuda. The Liquidators, on behalf of the Kingate Funds, shall be entitled to the cash deposited in the Liquidators’ bank accounts at HSBC Bank Bermuda, which, as of April 30, 2019, amounted to approximately \$24,668,983.38 and €32,243.75 (“Cash in Bermuda”), free of any claim by the Trustee. The Parties mutually agree that, at the Closing Date, the letter agreement entered into in October 2009 shall be terminated and without further legal effect.

10. Order Approving the Kingate Funds’ Allowed Claim/Trustee’s Waivers. The Trustee shall request that the Bankruptcy Court allow the Kingate Funds’ Allowed Claim, as provided in this Settlement Agreement, in a separate provision of the order approving this Settlement Agreement. The Trustee expressly waives (a) the operation of section 502(d) of the Bankruptcy Code, or any other provision for disallowance or reconsideration not expressly contemplated by this Settlement Agreement, and (b) subordination (whether pursuant to section 510(c) of the Bankruptcy Code or otherwise), or disallowance in each case with respect to the Kingate Funds’ Allowed Claim.

11. Effect of Breach of the Settlement Agreement. If after the Closing Date either Party is found by the Bankruptcy Court in a final, non-appealable order to be in material breach of this Settlement Agreement, the non-breaching Party shall have the right to seek monetary damages and mandatory injunctive relief against the breaching Party. In no event shall the Liquidators’ breach of this Settlement Agreement result in the disallowance, subordination (whether pursuant to section 510(c) of the Bankruptcy Code or otherwise), or other impairment of the Kingate Funds’ Allowed Claim, or in any way affect the releases referred to in Paragraphs 13 and 17 of this Agreement. The non-breaching Party may seek the remedies provided for in this paragraph, after providing written notice of such material breach to the breaching Party, and the breaching Party’s failure to cure such material breach within 45 days after receipt of such notice. The remedies specified in this paragraph are the sole remedies available to the non-breaching Party.

12. Kingate Funds' Sources of Recovery. The Trustee acknowledges and agrees that nothing in this Settlement Agreement shall prejudice or impair whatsoever any rights of the Kingate Funds, whether or not arising outside the scope of this Settlement Agreement, including, without limitation, the right to receive distributions made by the Trustee from the Estate to satisfy the claims of BLMIS's customers in the same manner and on the same timetable as any other holder of an allowed customer claim against BLMIS. In light of the consideration for the settlement, including without limitation, the amounts being remitted by the Kingate Funds to the Estate pursuant to this Settlement Agreement and the mutual releases in paragraphs 13 and 14 of this Settlement Agreement, upon the Closing Date, the Kingate Funds' Allowed Claim will stand in the same position as the allowed customer claims against BLMIS. Nothing in this paragraph shall in any way affect any rights, claims or interests of the Trustee other than as expressly set forth in this Settlement Agreement, as the same may subsequently be amended, all of which are expressly reserved.

13. Release by Trustee. In consideration for the terms herein, except with respect to any rights and obligations arising under this Settlement Agreement, effective upon the Closing Date (as defined below), the Trustee, on behalf of himself and BLMIS, and its consolidated estates, hereby releases, acquits and forever discharges the Kingate Funds and the Liquidators, including their successors and/or assigns, their professionals and agents, from any and all past, present or future 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, arising out of, or in any way related to the Kingate Funds' respective relationship with Madoff or BLMIS, including, without limitation, the claims against the Kingate Funds in the Complaint filed in the Kingate Proceeding, except for any and all claims to enforce the obligations of the Kingate Funds under this Agreement. The release granted by the Trustee hereunder shall extend to the Kingate Funds' shareholders to the extent that any such shareholders received transfers of money from the Kingate Funds but shall not include a release of claims that the Trustee may bring that are unrelated to the Kingate Funds' investments in or withdrawals from BLMIS. For avoidance of doubt, this release shall not affect any claims against any person or entity except as set forth in this paragraph.

14. Releases by the Liquidators, Kingate Global, and Kingate Euro. In consideration for the terms herein, except with respect to any rights and obligations arising under this Settlement Agreement including the Kingate Funds' Allowed Claim, effective upon the Closing Date, each of the Liquidators, Kingate Global, and Kingate Euro hereby releases, acquits and forever discharges SIPC, the Trustee and his professionals, agents and consultants, Madoff, BLMIS, and the Estate from any and all past, present or future 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, arising out of or in any way related to Madoff or BLMIS. For avoidance of doubt, this release shall not affect any claims against any third party, except as set forth in this paragraph.

15. As soon as practicable after the execution of this Settlement Agreement, the Trustee shall undertake best efforts to seek a mutual release from each of the Subsequent Transferee Defendants and HSBC Bank Bermuda in the form attached hereto as Annex D.

16. Closing and Closing Date. There shall be a closing (“Closing”) no later than five business days after satisfaction of the conditions set forth in paragraph 17 below, unless another time or date, or both, are agreed to in writing by the Parties (such date, the “Closing Date”). The Settlement Agreement shall be effective upon the Closing Date.

17. Conditions to Closing. The following constitute conditions precedent to the Parties’ settlement pursuant to the terms and conditions set forth in this Settlement Agreement:

- (a) The Liquidators, on behalf of the Kingate Funds, hereby shall have conveyed, assigned, endorsed and transferred to the Trustee the total amount of \$860,000,000.00, from the following: (i) the SIPC Advances, and (ii) the Catch-Up Payment.
- (b) The Bankruptcy Court shall have allowed in full the Kingate Funds’ Allowed Claim on a final and irrevocable basis, as provided in this Settlement Agreement.
- (c) The Bankruptcy Approval Order (as defined below) shall have been entered.
- (d) The BVI Approval Order and the Bermuda Approval Order (each as defined below) shall have been entered.
- (e) The Letter of Determination shall have been issued on a permanent and irrevocable basis and be in full force and effect.
- (f) The Liquidators, the Trustee, the Subsequent Transferee Defendants and HSBC Bank Bermuda shall have executed and delivered mutual releases (a) with respect to the Trustee Release, in the form attached as Annex D and (b) with respect to the Kingate Funds Release, in the form mutually acceptable to the Liquidators, the Subsequent Transferee Defendants, and HSBC Bank Bermuda.

18. Bankruptcy Court Approval; Termination. This Settlement Agreement is subject to Bankruptcy Court approval by an order that is not subject to appeal, review or rehearing (“Bankruptcy Approval Order”). The form of the Bankruptcy Approval Order shall be subject to the Liquidators’ prior approval, not to be unreasonably withheld, delayed, or conditioned. The Trustee shall use his best efforts to obtain such approval as promptly as practicable on or after the date of this Settlement Agreement. If the Closing Date of this Settlement Agreement has not occurred within 75 days after the later of (a) the date of this Settlement Agreement, (b) the date the Trustee files a motion with the Bankruptcy Court to approve this Settlement Agreement and (c) the date the BVI Court and the Bermuda Court approve the Settlement Agreement (or within such additional time as the Liquidators permit,

which extension shall not be unreasonably denied, withheld, or conditioned), then (i) this Settlement Agreement (other than this paragraph and paragraphs 28 and 29 below) shall be void; (ii) all of the statements, admissions, consents, and agreements contained in the Settlement Agreement (other than this paragraph and paragraphs 28 and 29 below) shall terminate and be void; and (iii) neither the Trustee nor any of the Liquidators, Kingate Global, or Kingate Euro may use or rely on any such statement, admission, consent, or agreement in any public statement or litigation involving the SIPA Proceedings, any case or proceeding relating to the SIPA Proceeding, or any case or proceeding relating to BLMIS or Madoff. Except as provided for in this paragraph and in paragraph 19 below, there shall be no other basis for termination of this Settlement Agreement by either Party.

19. BVI Court Approval and Bermuda Court Approval. This Settlement Agreement is subject to (a) the BVI Court's approval by an order that is not subject to a timely appeal or to a stay by any court of competent jurisdiction ("BVI Approval Order"), and (b) the Bermuda Court's approval by an order that is not subject to a timely appeal or to a stay by any court of competent jurisdiction ("Bermuda Approval Order"). The form of the BVI Approval Order and the Bermuda Approval Order shall be subject to the Trustee's prior approval, not to be unreasonably withheld, delayed or conditioned. The Liquidators agree to (1) name the Trustee as a respondent and provide notice to the Trustee's counsel of (A) any application for a BVI and Bermuda Approval Order and (B) any application in which the Liquidators seek an order relevant to paragraphs 7 or 8 of this Agreement compelling payment of distributions to individuals on Annex C and/or who may have received MVF Receipts and (2) consent to the appearance of the Trustee's counsel at any hearings thereof (subject to the understanding that it may be necessary or appropriate to limit the documents provided to the Trustee's counsel and/or exclude the Trustee's Counsel from sections of any hearing at which confidential and/or privileged matters are discussed between the Liquidators/their counsel and their supervising court). The Liquidators shall use their best efforts to obtain such approvals as promptly as practicable on or after the date of this Settlement Agreement. If the Closing Date of this Settlement Agreement has not occurred within 150 days after the later of (a) the date of this Settlement Agreement, and (b) the date the Liquidators seek approval of the BVI Court and the Bermuda Court of this Settlement Agreement (or within such additional time as the Trustee permits, which extension shall not be unreasonably denied, withheld, or conditioned), then (i) this Settlement Agreement (other than this paragraph and paragraphs 28 and 29 below) shall terminate and be void; (ii) all of the statements, admissions, consents, and agreements contained in the Agreement (other than this paragraph and paragraph 18 above and paragraphs 28 and 29 below) shall be void; and (iii) neither the Trustee nor any of the Liquidators, Kingate Global, or Kingate Euro may use or rely on any such statement, admission, consent, or agreement in any public statement or litigation involving the SIPA Proceeding, any case or proceeding relating to the SIPA Proceeding, or any case or proceeding relating to BLMIS or Madoff. Except as provided for in this paragraph and in paragraph 18 above, there shall be no other basis for termination of this Settlement Agreement by either Party.

20. Liquidators' Authority and Representations. The Liquidators represent to the Trustee, as of the date hereof, and subject to the approval of the BVI Court and the Bermuda Court, as set forth in paragraph 19 above, the following:

- (a) Each of them has the full power, authority, and legal right to execute and deliver, and to perform his or her respective obligations under, this Settlement Agreement, and has taken all necessary action to authorize the execution and delivery of, and the performance of his or her respective obligations under, this Settlement Agreement.
- (b) The only assets remaining in the Kingate Funds' respective liquidation proceedings pending before the BVI Court and the Bermuda Court, aside from the claims against BLMIS, the Cash in Bermuda and funds received from the settlement of *Kingate Global Fund Ltd. v. Kingate Management Ltd., et al.* 2010:454 Supreme Court of Bermuda, Civil Jurisdiction Commercial Division and other third-party litigation, and currently there are no insurance and/or insurance proceeds available to the Liquidators.

21. Trustee's Authority and Other Representations. The Trustee represents to the Liquidators, as of the date hereof, and subject to the approval of the Bankruptcy Court, as set forth in paragraph 18 above, that he has the full power, authority, and legal right to execute and deliver, and to perform his respective obligations under, this Settlement Agreement, and has taken all necessary action to authorize the execution and delivery of, and the performance of his respective obligations under, this Settlement Agreement.

22. Further Assurances. The Parties shall execute and deliver any document or instrument reasonably requested by either of them after the date of this Agreement to give effect to its intent.

23. Entire Agreement. This Settlement Agreement constitutes the entire agreement and understanding between and among the Parties and supersedes all prior agreements, representations and understandings concerning the subject matter hereof.

24. Amendments, Waiver. This Settlement Agreement may not be terminated, amended, or modified in any way except as set forth herein. Material modifications to this Settlement Agreement must be in a writing signed by all the Parties and are subject to approval from the Bankruptcy Court, the BVI Court and the Bermuda Court. Non-material modifications must be in a writing signed by all Parties. No waiver of any provision of this Settlement 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.

25. Assignability. No Party hereto may assign its rights under this Settlement Agreement to a third party without the prior written consent of each of the other Parties hereto; provided, however, the Liquidators may sell and transfer, subject to compliance with the claims trading procedures approved by the Bankruptcy Court in the SIPA Proceeding, the Kingate Funds' Allowed Claim; provided further, however, the Kingate Funds' Allowed Claim shall not be sold to any person or entity that is named on Annex C.

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

27. No Third-Party Beneficiary. The Parties do not intend to confer any benefit by or under this Settlement Agreement upon any person or entity other than the Parties hereto and their respective successors and permitted assigns, except that the Kingate Funds' current and former shareholders shall benefit from the releases provided for in paragraph 13 and the Subsequent Transferee Defendants and HSBC Bank Bermuda shall benefit from the releases referred to in paragraph 17(f).

28. Applicable Law. This Settlement Agreement shall be construed and enforced in accordance with the laws of the State of New York without regard to its conflict of law provisions that would result in the application of the law of another jurisdiction. Each Party waives, on behalf of itself and any 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.

29. Exclusive Jurisdiction. The Parties agree that any action between the Parties arising from, relating to, or in connection with this Settlement Agreement, may be brought only in the Bankruptcy Court, and each Party consents that the Bankruptcy Court may enter final judgment in any action against the other Party coming before it. No Party shall bring, institute, prosecute, or maintain any action arising from, relating to, or in connection with any provision of this Settlement Agreement in any court other than the Bankruptcy Court, except for the limited purpose of enforcing a final award or judgment entered by the Bankruptcy Court, the BVI Court, the Bermuda Court, or some other court of competent jurisdiction in connection with the claims brought pursuant to this Settlement Agreement. Each Party hereby submits to the jurisdiction of the Bankruptcy Court or, if the Bankruptcy Court does not exercise its jurisdiction, to the state and federal courts of the State of New York, and further agrees to accept service of process in connection with any action arising under this paragraph by hand or registered mail at the addresses set forth in paragraph 34 below and to waive any and all objections to the adequacy of such service. Each Party further agrees to waive any and all defenses to the enforceability of a final award or judgment entered by the Bankruptcy Court under this paragraph in any action brought by either Party to enforce such final award or judgment.

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

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

32. Negotiated Agreement. This Settlement Agreement has been fully negotiated by the Parties. Each Party acknowledges and agrees that this Agreement has been drafted jointly, and the rule that ambiguities in an agreement or contract may be construed against the drafter shall not apply in the construction or interpretation of this Settlement Agreement.

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

34. Notices. Any notices under this Settlement 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, Esq.
Baker & Hostetler LLP
45 Rockefeller Center
New York, NY 10111
F: (212) 589-4201
E: dsheehan@bakerlaw.com

If to the Liquidators:

Kalo Advisors
PO Box 4571,
4th Floor, LM Business Center
Fish Lock Road
Road Town, Tortola
British Virgin Islands
Attn: Paul Pretlove and Tammy Fu
Tel: 284-393-6900
E: ppretlove@kalo advisors.com
tfu@kalo advisors.com

and John C. McKenna
Finance & Risk Services Ltd.
P.O. Box HM 321
Hamilton HM BX
Bermuda
E: john.mckenna@frsl.bm

with a copy to:

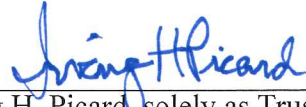
Gary S. Lee, Esq.
Morrison & Foerster LLP
250 West 55th Street
New York, NY 10109
F: (212) 468-7900
E: glee@mofo.com

Robert S. Loigman, Esq.
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Ave., 22nd Floor
New York, NY 10010
F: (212) 849-7100
E: robertloigman@quinnemanuel.com

and

Jeremy Scott, Esq.
Lipman Karas LLP
Level 7, Holborn Gate
26 Southampton Buildings
London WC2A 1AN
United Kingdom
E: jscott@lipmankaras.com

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



Irving H. Picard solely as Trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act of 1970, as amended, and the substantively consolidated Chapter 7 estate of Bernard L. Madoff, without personal liability

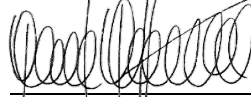
Paul Pretlove, as Joint Liquidator for and on behalf of Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd., without personal liability

Tammy Fu, as Joint Liquidator for and on behalf of Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd., without personal liability

John C. McKenna, as Joint Liquidator for and on behalf of Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd., without personal liability

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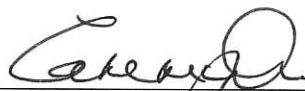
Tammy Fu, as Joint Liquidator for and on behalf of Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd., without personal liability

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John C. McKenna, as Joint Liquidator for and on behalf of Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd., without personal liability

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008¹

NOTICE OF TRUSTEE'S DETERMINATION OF CLAIMS

July __, 2019

Kingate Euro Fund Ltd.
Kingate Global Fund Ltd.
c/o Kalo Advisors
P.O. Box 4571
4th Floor, LM Business Center
Fish Lock Road
Road Town, Tortola
British Virgin Islands
Attention: Paul Pretlove and Tammy Fu

Kingate Euro Fund Ltd.
Kingate Global Fund Ltd.
c/o John C. McKenna
Finance & Risk Services Ltd.
P.O. Box HM 321
Hamilton HM BX
Bermuda

Dear Kingate Global Fund Ltd. and Kingate Euro Fund Ltd.:

PLEASE READ THIS NOTICE CAREFULLY.

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

The Trustee has made the following determination regarding your claims on BLMIS Account Nos. 1FN061 and 1FN086, designated as Claim Nos. 015359 and 015358, respectively:

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

Your claims for securities are **DENIED**. No securities were ever purchased for your accounts.

Your claims for BLMIS Account Nos. 1FN061 and 1FN086, and the Trustee's claims against you in *Picard v. Federico Ceretti, et al.*, Adv. Pro. No. 09-01161 (SMB), have been settled on the terms and subject to the conditions set forth in that certain **SETTLEMENT AGREEMENT**, dated as of June __, 2019 between Kingate Euro Fund Ltd. and Kingate Global Fund Ltd. (the "Kingate Funds"), by Paul Pretlove, Tammy Fu, and John C. McKenna, in their capacity as joint liquidators, and the Trustee, and approved by the Bankruptcy Court by Order entered _____, 2019.

Pursuant to the terms of and solely for purposes of the **SETTLEMENT AGREEMENT**, your claims are **ALLOWED** in the amount of \$1,659,748,094.52 (the "Allowed Claim") representing \$799,748,094.52, plus an additional \$860,000,000. Your Allowed Claim will be partially satisfied in the amount of \$1,000,000.00 (\$500,000.00 for each of BLMIS Account Nos. 1FN061 and 1FN086), with the funds being advanced by the Securities Investor Protection Corporation pursuant to section 78fff-3(a)(1) of SIPA, provided that you assigned, transferred, endorsed and set over to the Trustee the full amount of such advance on the terms and subject to the conditions set forth in the Settlement Agreement.

At this time (and through the Tenth Interim Distribution), catch-up payments from the Trustee's pro rata distributions of customer property are due and owing in the amount of \$1,105,939,947.82 (66.633% of the Allowed Claim). You have agreed that \$859,000,000.00 of such distribution would be assigned, transferred, endorsed and set over to the Trustee, leaving a balance of \$246,939,947.82 to be distributed to you subject to the terms of that certain **SETTLEMENT AGREEMENT**.

The Trustee expects that there will be future interim distributions of which you will be notified.

You agree to waive the thirty (30) day objection period in connection with this determination.

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

cc: Robert S. Loigman, Esq.
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010

Jeremy Scott, Esq.
Lipman Karas LLP
Level 7, Holborn Gate
26 Southampton Buildings
London WC2A 1AN
United Kingdom

Annex B

Picard v. Federico Ceretti, et al., Adv. Pro. No. 09-01161 (SMB) (S.D.N.Y.)

Picard v. Kingate Management Limited et al., 2010 Folio 1478 (In the High Court of Justice, Queen's Bench Division, Commercial Court)

Picard v. HSBC Bank Bermuda, 2010: No. 425 (Supreme Court of Bermuda)

Picard v. Kingate Global Fund, Ltd. (in liquidation), BVIHCV(C) 0163 of 2010 (The Eastern Caribbean Supreme Court, In the High Court of Justice, British Virgin Islands, Commercial Division)

Picard v. Kingate Euro Fund, Ltd. (in liquidation), BVIHCV(C) 0162 of 2010 (The Eastern Caribbean Supreme Court, In the High Court of Justice, British Virgin Islands, Commercial Division)

Annex C

1. Carlo Grosso, heirs, relatives, and assigns
2. Federico Ceretti, heirs, relatives, and assigns
3. FIM Advisers, FIM Limited, FIM (USA), or any related FIM entity (collectively, "FIM")
4. Any former or current FIM officer, director, or partner
5. Kingate Management Limited, in Liquidation ("KML")
6. Any former or current KML officer or director
7. Any former director of the Kingate Funds, including but not limited to Sandra Manzke, Charles Sebah, Keith Bish, John Epps, and Graham Cook
8. The Ashby Trust
9. The El Praela Trust
10. First Peninsula Trustees Limited, but only Individually and as Trustee of the Ashby Trust
11. Ashby Investment Services Limited
12. Alpine Trustees Limited, but only Individually and as Trustee of the El Praela Trust
13. Port of Hercules Trustees Limited, but only Individually and as Trustee of the El Praela Trust
14. El Praela Group Holding Services Limited
15. Ashby Holding Services Limited
16. El Praela Trading Investments Limited
17. Phillip Evans
18. Bernard L. Madoff, and any heirs, relatives, and assigns
19. Any former employees of Bernard L. Madoff Investment Securities
20. Citi Hedge Fund Services (now doing business as SS&C Fund Services (Bermuda) Ltd.)
21. HSBC Bank Bermuda

Annex D

Mutual Release

WHEREAS, on or about June 26, 2019, Irving H. Picard, in his capacity as trustee (the “Trustee”) under the Securities Investor Protection Act of 1970, 15 U.S.C. §§ 78aaa *et seq.*, as amended, for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the substantively consolidated Chapter 7 estate (the “Estate”) of Bernard L. Madoff (“Madoff”), and Paul Pretlove, Tammy Fu, and John C. Mckenna, in their capacity as joint liquidators of Kingate Global Fund, Ltd. (“Kingate Global”) and Kingate Euro Fund, Ltd. (“Kingate Euro” and together with Kingate Global, the “Kingate Funds”) entered into a Settlement Agreement (the “Agreement”), and pursuant to the Agreement, the Trustee shall discontinue all claims against Kingate Global and Kingate Euro, and Federico Ceretti, Carlo Grosso, Kingate Management Limited, FIM Advisers LLP, FIM Limited, First Peninsula Trustees Limited, individually and as Trustee of the Ashby Trust, the Ashby Trust, Ashby Investment Services Limited, Alpine Trustees Limited, individually and as Trustee of the El Praela Trust, Port of Hercules Trustees Limited, individually and as Trustee of the El Praela Trust, the El Praela Trust, El Praela Group Holding Services Limited, Ashby Holding Services Limited, and El Praela Trading Investments Limited (collectively the “KML Defendants”), Citi Hedge Fund Services Limited (now doing business as SS&C Fund Services (Bermuda) Ltd.) (“CitiHedge” and, collectively with the KML Defendants, the “Subsequent Transferee Defendants”), and HSBC Bank Bermuda Limited (“HSBC Bank Bermuda”) in the actions identified in Annex B to the Agreement (the “Actions”).

NOW, THEREFORE, in consideration of the mutual covenants, promises and undertakings set forth herein, and for other good and valuable consideration, the mutual receipt and sufficiency of which are hereby acknowledged, and without admission by any party as to liability or the lack thereof, the Trustee, the Subsequent Transferee Defendants, and HSBC Bank Bermuda, agree as follows (the “Release”):

1. Release by Trustee of KML Defendants and CitiHedge. The Trustee, on behalf of himself and BLMIS, and its consolidated estates, hereby releases, acquits and forever discharges the KML Defendants and CitiHedge, and their respective subsidiaries, affiliates, officers, directors, shareholders, partners, members, trustees, beneficiaries, agents, successors and assigns, employees, professionals and consultants from any and all past, present or future 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, accrued or unaccrued, known or unknown, arising out of or in any way related to the Kingate Funds, or CitiHedge’s or the KML Defendants’ respective relationship to BLMIS or Madoff, including but not limited to the claims set forth in the Actions.
2. Release by Trustee of HSBC Bank Bermuda. The Trustee, on behalf of himself and BLMIS, and its consolidated estates, hereby releases, acquits and forever discharges HSBC Bank Bermuda and its subsidiaries, affiliates, officers, directors, shareholders, partners, members, trustees, beneficiaries, agents, successors and assigns, employees, professionals and

consultants from any and all past, present or future 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, accrued or unaccrued, known or unknown, arising out of or in any way related to the recovery of transfers made by BLMIS to the Kingate Funds, including but not limited to the claims set forth in the Actions. This is a limited and specific release and neither HSBC Bank Bermuda, nor its respective subsidiaries, affiliates, officers, directors, shareholders, partners, members, trustees, beneficiaries, agents, successors and assigns, employees, professionals and consultants are released from claims that the Trustee has brought or may bring that are unrelated to the Kingate Funds' investments in and/or withdrawals from BLMIS in other pending or future actions. For the avoidance of doubt, and notwithstanding anything to the contrary contained herein, the Trustee is not releasing any claims against HSBC Bank Bermuda to recover transfers made by BLMIS to any customer of BLMIS other than the Kingate Funds.

3. Releases by the Subsequent Transferee Defendants. The Subsequent Transferee Defendants hereby release, acquit and forever discharge the Trustee and his professionals, agents and consultants, Madoff, BLMIS, and the Estate from any and all past, present or future 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, accrued or unaccrued, known or unknown, arising out of or in any way related to the Kingate Funds, Madoff or BLMIS, including but not limited to the claims asserted in the Actions.

4. Release by HSBC Bank Bermuda Ltd. HSBC Bank Bermuda Ltd. hereby releases, acquits and forever discharges the Trustee and his professionals, agents and consultants, Madoff, BLMIS, and the Estate from any and all past, present or future 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, accrued or unaccrued, known or unknown, arising out of or in any way relating to the Kingate Funds' investments in or withdrawals from BLMIS, including but not limited to the claims asserted in the Actions.

5. Discontinuance of Actions. Within 10 business days after the Closing Date (as defined in the Agreement), the Trustee shall discontinue the Actions on terms that there be no orders for costs and all parties to the Actions bear their own costs. The Trustee and each of the Subsequent Transferee Defendants and HSBC Bank Bermuda (collectively, the "Release Parties") agree that they shall bear their own respective costs in the Actions and forever waive their respective rights to seek a costs order against any other of the Release Parties. The Trustee shall dismiss the Actions with prejudice as to the Subsequent Transferee Defendants and HSBC Bank Bermuda. The parties shall promptly take any action necessary to effectuate the discontinuance of any related appeals of the Actions. The Trustee and his professionals, agents and consultants shall not make statements to the effect that it has been established in the Actions that any of the Subsequent Transferee Defendants or HSBC Bank Bermuda had actual knowledge of or were willfully blind to Madoff's fraud.

6. Applicable Law. This Release shall be construed and enforced in accordance with the laws of the State of New York without regard to its conflict of law provisions that

would result in the application of the law of another jurisdiction. The Release Parties each waives, on behalf of itself and any 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.

7. Exclusive Jurisdiction. The Release Parties agree that any action between any of the Release Parties arising from, relating to, or in connection with this Release, may be brought only in the Bankruptcy Court, and each of the Release Parties consents that the Bankruptcy Court may enter final judgment in any action against the other coming before it under this paragraph. None of the Release Parties shall bring, institute, prosecute, or maintain any action arising from, relating to, or in connection with any provision of this Release in any court other than the Bankruptcy Court, except for the limited purpose of enforcing a final award or judgment entered by the Bankruptcy Court, the BVI Court, the Bermuda Court, or some other court of competent jurisdiction in connection with the claims brought pursuant to this Release. Each of the Release Parties hereby submits to the jurisdiction of the Bankruptcy Court in connection only with any action arising under this paragraph or, if the Bankruptcy Court does not exercise its jurisdiction, to the state and federal courts of the State of New York, and further agrees to accept service of process in connection with any action arising under this paragraph by hand or registered mail and to waive any and all objections to the adequacy of such service. Each of the Release Parties further agrees to waive any and all defenses to the enforceability of a final award or judgment entered by the Bankruptcy Court under this paragraph in any action brought by any of the Release Parties to enforce such final award or judgment.

8. Counterparts; Electronic Copy of Signatures. This Release may be executed and delivered in any number of counterparts (including by electronic or facsimile signature), 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. For the avoidance of doubt, the releases set forth herein shall not take effect until all of the Release Parties have executed this Release. The Release Parties may evidence their execution of this Release by delivery of scanned or faxed copies of their signatures, with the same effect as the delivery of an original signature.

[Signature Pages to Follow]

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

Irving Picard, as Trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act of 1970, as amended, and the substantively consolidated Chapter 7 estate of Bernard L. Madoff, without personal liability

Kenneth Joaquin, as Official Receiver for Bermuda, in his capacity as provisional liquidator of Kingate Management Limited, without personal liability

FIM Limited

By:
Title:

FIM Advisers LLP

By:
Title:

Carlo Grosso

Federico Ceretti

The Ashby Trust
by First Peninsula Trustees Limited

By:
Title:

The El Prela Trust
by Port of Hercules Trustees Limited
By:
Title:

Ashby Holding Services Limited
By:
Title:

Ashby Investment Services Limited
By:
Title:

El Prela Group Holding Services Limited
By:
Title:

El Prela Trading Investments Limited
By:
Title:

First Peninsula Trustees Limited, individually and
as Trustee of the Ashby Trust
By:
Title:

Port of Hercules Trustees Limited, individually and
as Trustee of the El Prela Trust
By:
Title:

Alpine Trustees Limited, individually and as
Trustee of the El Praela Trust

By:
Title:

Citi Hedge Fund Services Limited
(now doing business as SS&C Fund Services
(Bermuda) Ltd.)

By:
Title:

HSBC Bank Bermuda Limited

By:
Title:

HSBC Bank Bermuda Limited

By:
Title:

EXHIBIT B

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

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	Adv. Pro. No. 08-01789 (SMB) SIPA LIQUIDATION (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. FEDERICO CERETTI, et al., Defendants.	Adv. Pro. No. 09-01161 (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 AGREEMENT BY AND AMONG THE TRUSTEE AND KINGATE GLOBAL FUND, LTD. AND KINGATE EURO FUND, LTD.

Upon the motion (the “Motion”) of Irving H. Picard (the “Trustee”), as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–*lll*, and the substantively consolidated Chapter 7 estate of Bernard L. Madoff, seeking entry of an order, pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, approving the agreement by and among the Trustee and Kingate Global

Fund, Ltd. and Kingate Euro Fund, Ltd. (together, the “Kingate Funds”), and as more particularly set forth in the agreement annexed as Exhibit A to the Motion (the “Agreement”); and it appearing that due and sufficient notice has been given to all parties in interest as required by Rule 2002 and 9019 of the Federal Rules of Bankruptcy Procedure; and the Court having considered the Declaration of Irving H. Picard in support of the Motion; and it further appearing the relief sought in the Motion is appropriate; 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; after due deliberation; and sufficient cause appearing therefor; it is

ORDERED, that the settlement among the Trustee and the Kingate Funds is hereby approved and authorized; and it is further

ORDERED, that each of the Trustee and the Kingate Funds shall 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
August __, 2019

HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201

Hearing Date: August 8, 2019 at 10 a.m.
Objection Deadline: August 1, 2019

*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 Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

FEDERICO CERETTI, et al.,

Defendants.

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

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 09-01364 (SMB)

**DECLARATION OF IRVING H. PICARD, TRUSTEE, IN SUPPORT OF MOTION FOR
ENTRY OF ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE
AND RULES 2002 AND 9019 OF THE FEDERAL RULES OF BANKRUPTCY
PROCEDURE APPROVING A SETTLEMENT AGREEMENT BY AND BETWEEN
THE TRUSTEE AND KINGATE GLOBAL FUND, LTD.
AND KINGATE EURO FUND, LTD.**

1. I am the trustee (“Trustee”) for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–III, and the substantively consolidated estate of Bernard L. Madoff (together with BLMIS, the “Debtors”). I am familiar with the affairs of the Debtors. I respectfully submit this Declaration in support of the motion (the “Motion”) seeking entry of an order, pursuant to 11 U.S.C. § 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure, approving the settlement agreement (the “Agreement”) by and among the Trustee and Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd. (together, the “Kingate Funds”).

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

3. All capitalized terms not defined herein have the meaning ascribed to them in the Agreement submitted as Exhibit A to the Motion.

4. I believe that the terms of the Agreement fall well above the lowest point in the range of reasonableness and, accordingly, the Agreement should be approved by this Court. The Agreement resolves all issues regarding the asserted and unasserted claims between the Trustee and the Kingate Funds without the need for protracted and costly litigation, the outcome of which is uncertain. Litigating the claims would undoubtedly be complex, create further delay, and would involve litigation risks associated with the unique facts of this case.

5. As part of the Agreement, the Parties have reached a good faith, complete, and total compromise as to any and all claims the Trustee has asserted against the Kingate Funds in this Adversary Proceeding.

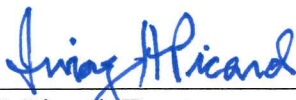
6. The Agreement furthers the interest of BLMIS customers by, among other things, adding \$860,000,000 to the customer property fund, and (b) recovering 100% of the transfers from BLMIS to the Kingate Funds during the six years prior to the collapse of BLMIS, and 93% of the transfers to the Kingate Funds during the life of the Kingate Funds' investment with BLMIS.

7. The settlement resulted from a lengthy mediation process before a neutral that involved a thorough review of the strengths and weaknesses of each parties' position.

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

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 26, 2019.



Irving H. Picard, Trustee

Sworn and subscribed before me this
26th day of June, 2019


Notary Public

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