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 (LGB) SIPA Liquidation (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Chapter 7 Estate of Bernard L. Madoff, Plaintiff, v. HSBC BANK PLC, HSBC BANK USA, N.A., HSBC USA, INC., HSBC PRIVATE BANK (SUISSE) S.A., and SICO LIMITED, Defendants.	Adv. Pro. No. 09-01364(LGB)

MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR ENTRY OF FINAL JUDGMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 54(b)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Irving H. Picard (the "Trustee"), as trustee of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.* ("SIPA"), and the substantively consolidated Chapter 7 estate of Bernard L. Madoff, respectfully submits this memorandum of law in support of his Motion for Entry of Final Judgment Pursuant to Federal Rule of Civil Procedure 54(b)[1] (the "Motion"), which seeks this Court's entry of final judgment on the dismissal of certain subsequent transfer claims against HSBC Private Bank (Suisse) S.A. ("PBRS") and HSBC Bank USA, N.A. ("HBUS") (the "Dismissed Claims"). PBRS and HBUS (together, the "HSBC Defendants") do not oppose this Motion.

PRELIMINARY STATEMENT

Entry of a final judgment pursuant to Rule 54(b) is appropriate here where there are multiple parties and multiple claims, at least one of which has been finally decided within the meaning of 28 U.S.C. § 1291 and there is no just reason for delay.

On September 29, 2025, this Court entered a Memorandum Opinion and Order Granting Defendants' Motion for Judgment on the Pleadings (the "Decision") on the ground that the Dismissed Claims did not relate back to the Amended Complaint filed in 2010 pursuant to Federal Rule of Civil Procedure 15 and were therefore barred by the statute of limitations pertaining to subsequent transfer claims.[2] On October 20, 2025, this Court entered an Order Granting Judgment on the Pleadings in Favor of the HSBC Defendants (the "Order").[3] The Decision and Order finally resolves the Dismissed Claims, which are the only claims presently

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[1] Made applicable to this proceeding through Federal Rule of Bankruptcy Procedure 7054(a).

[2] Mem. Op. and Order Granting Defs.' Mot. for J. on the Pleadings, ECF No. 778.

[3] Order Granting J. on the Pleadings in Favor of the HSBC Defs., ECF No. 779.

before this Court against PBRS and the only claims against HBUS concerning subsequent transfers from Fairfield Sentry Limited. There is no just reason to delay the entry of a final order and judgment as to those claims.

In 2010, the Trustee filed a First Amended Complaint (the "FAC") which sought to comprehensively plead HSBC's overall BLMIS-related activity.[4] The FAC brought claims against several HSBC entities based on these allegations both under common law and the U.S. Bankruptcy Code, and specifically against the HSBC Defendants.[5] In 2023, the Trustee filed a Second Amended Complaint (the "SAC") which included claims for the recovery of transfers from Fairfield Sentry to PBRS for $283,291,567 and to HBUS for $31,775,129 and from Fairfield Sigma to PBRS for $9,182,501, i.e. the Dismissed Claims.[6] On March 11, 2025, the HSBC Defendants brought a motion seeking judgment on the pleadings claiming that the Trustee was barred from bringing the claims to recover these transfers from Fairfield Sentry and Fairfield Sigma because the claims did not relate back to the FAC.[7] The Trustee opposed the motion asserting that these transfer claims did in fact relate back because the claims "arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading," namely the conduct surrounding HSBC Private Bank investments with BLMIS.[8] The Court granted the HSBC Defendants' motion. In so doing, the Court dismissed all claims against PBRS. Because HBUS received subsequent transfers from other BLMIS feeder funds, and not

[4] First Am. Compl., ECF No. 170.

[5] *Id.* The common law claims were dismissed. *In re Bernard L. Madoff Inv. Secs. LLC*, 721 F.3d 54, 58 (2d Cir. 2013), *cert. denied sub nom.*, *Picard v. HSBC Bank PLC*, 573 U.S. 945 (2014).

[6] Second Am. Compl. ¶¶ 360–66, ECF No. 745.

[7] Mem. of Law In Supp. of Defs.' Mot. for J. on the Pleadings, ECF No. 768.

[8] Opp'n to Defs.' Mot. for J. on the Pleadings, ECF No. 770 (quoting Fed. R. Civ. P. 15(c)).

just Fairfield Sentry, other subsequent transfer claims remain active against HBUS—however, all claims pertaining to the recovery of subsequent transfers received by HBUS from Fairfield Sentry within HSBC's Private Bank division have been fully dismissed.

The Trustee seeks entry of a partial final order and judgment under Rule 54(b) to make clear that the Dismissed Claims have been finally decided and ultimately disposed of and are ripe for appeal.

ARGUMENT

I. Legal Standard for Entry of A Final Judgment Under Rule 54(b)

Certification under Rule 54(b) is appropriate when (1) there are multiple claims or multiple parties; (2) at least one claim is finally decided within the meaning of 28 U.S.C. § 1291; and (3) an express determination is made that there is no just reason for delay. *See Ginett v. Computer Task Grp., Inc.*, 962 F.2d 1085, 1091 (2d Cir. 1992).[9] A court may enter a final judgment even though the judgment would dispose of fewer than all claims or would dispose of all claims against fewer than all of the parties. *See Shrader v. Granninger*, 870 F.2d 874, 878 (2d Cir. 1989) (citing *Cullen v. Margiotta*, 811 F.2d 698, 710 (2d Cir. 1987), *overruled on other grounds recognized in Chavez v. Occidental Chemical Corp.*, 933 F.3d 186 (2d Cir. 2019)); *see, e.g.*, *Fed. Deposit Ins. Corp. v. Bernstein*, 944 F.2d 101, 108–09 (2d Cir. 1991) (affirming judgment under Rule 54(b) when judgment disposed of fewer than all claims). Certification under Rule 54(b) may be granted "in the interest of sound judicial administration." *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980) (quoting *Sears, Roebuck & Co. v.*

[9] Federal Rule of Civil Procedure 54(b) provides in pertinent part: "When an action presents more than one claim for relief . . . or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay."

Mackey, 351 U.S. 427, 437 (1956)). A decision to enter final judgment lies within the sound discretion of the court. *Id.* at 10. Certification is appropriate here where all three elements are satisfied.

II. **The Court Should Direct Entry of Final Judgment as To The Dismissed Claims Because Each Prong of Rule 54(b) is Satisfied**

A. **There are multiple claims against multiple parties**

A court is permitted to direct entry of a final judgment by Rule 54(b), "[w]here, as here, multiple parties are involved in a case." *In re Agape Litig.*, 274 F.R.D. 453, 454 (E.D.N.Y 2011). In this instance, although other HSBC entities remain in the case, the Decision and Order dismissed all claims against PBRS. Because the Trustee sought the recovery of subsequent transfers from Fairfield Sentry to PBRS, the continued litigation with the undismissed parties seeking separate subsequent transfers, would not resolve the Trustee's claims against PBRS if reinstated. *See Cullen*, 811 F.2d at 710–11.

A court is also permitted to direct entry of a final judgment when there are multiple claims. When considering whether to enter partial final judgment on the dismissal of some, but not all, claims, the court must find that the dismissed claims are separable from those that remain. *See Nippon Yusen Kaisha v. FIL Lines USA Inc.*, 977 F. Supp. 2d 343, 352 (S.D.N.Y. 2013). Claims are separable for purposes of Rule 54(b) if they "can be decided independently of each other." *Ginett*, 962 F.2d at 1097 (quoting *Sears, Roebuck & Co.*, 351 U.S. at 436); *see also Nippon Yusen Kaisha*, 977 F. Supp. 2d at 352–53 (separate claims must involve "at least some different questions of fact and law and could be separately enforced" (quoting *Avondale Indus., Inc. v. Travelers Indem. Co.*, 887 F.2d 1200, 1203 (2d Cir. 1989)). Notably, "claims may be considered separable even if they have arisen out of the same transaction or occurrence." *Cullen*, 811 F.2d at 711.

Here, the Dismissed Claims are separable because they involve the recovery of specific transfers between Fairfield Sentry/Fairfield Sigma and the HSBC Defendants in connection with those entities acting within HSBC Private Bank, a division of HSBC. These claims require some separate facts and are distinct from the Trustee seeking to recover subsequent transfers between HBUS, on the one hand, and Greenwich Sentry L.P. or Rye Select Broad Market Fund, L.P., a Tremont feeder fund, on the other hand, in connection with swap transactions performed within HSBC Global Structured Fund Products division ("Swap Subsequent Transfers"). The Swap Subsequent Transfer claims against HBUS were also present in the 2010 Amended Complaint.

The crux of the Trustee's Opposition to the HSBC Defendants' Motion was that the allegations pertaining to HSBC Private Bank in the FAC gave rise to the Dismissed Claims and put the HSBC Defendants on notice of the Dismissed Claims. The Trustee did not argue, nor did the Court find, that an overlap in the Dismissed Claims and the Swap Subsequent Transfer Claims alone could provide the basis for relation back. Therefore, the Dismissed Claims are demonstrably separable.

Finally, the Dismissed Claims can be separately enforced, as the recovery of the subsequent transfers are between different parties and feeder funds. *See In re Methyl Tertiary Butyl Ether ("MTBE") Prods. Liab. Litig.*, No. 00-mdl-1898 (SAS), 2010 WL 1328249, at *2 (S.D.N.Y. Apr. 5, 2010) ("Claims are normally treated as separable . . . if they involve at least some different questions of fact and law and could be separately enforced. . . ." (quoting *Advanced Magnetics, Inc. v. Bayfront Partners, Inc.*, 106 F.3d 11, 21 (2d Cir. 1997))); *Hirsch v. Gersten (In re Centennial Textiles, Inc.)*, 220 B.R. 177, 181 (Bankr. S.D.N.Y. 1998).

B. <u>The Dismissed Claims have been finally determined</u>

The second prong of Rule 54(b) requires that "at least one claim, or the rights and liabilities *of at least one party*, must be finally decided within the meaning of 28 U.S.C. § 1291."

Nippon Yusen Kaisha, 977 F. Supp. 2d at 352 (quoting *Advanced Magnetics*, 106 F.3d at 16) (emphasis added). This prong is clearly satisfied since PBRS's rights and liabilities are finally decided—the Trustee has no right to pursue claims against PBRS as a result of the Decision and Order. Such dismissal amounts to the type of "final" judgment that meets the test for finality required by Rule 54(b). *See Rivera v. Schweiker*, 717 F.2d 719, 722 n.1 (2d Cir. 1983) (dismissal following a determination on a Rule 12(c) motion is a final judgment). Although separate subsequent transfer claims remain against HBUS, the dismissal of the claims seeking to recover subsequent transfers HBUS received from Fairfield Sentry is final and the Trustee may not pursue those particular claims.

C. There is no just reason to delay entry of final judgment on the Dismissed Claims

In deciding whether to enter a Rule 54(b) order, the court should consider the efficiency interests of the trial and appellate courts, as well as balance the equities as to the parties. *See Curtiss-Wright*, 446 U.S. at 8; *Ginett*, 962 F.2d at 1095–96. Although the remaining subsequent transfer claims are distinct from the Dismissed Claims, the discovery and proofs applicable to the defenses of those claims have significant overlap. In the event the Dismissed Claims are reinstated by the District Court, "an expensive and duplicative trial could be avoided" if the appeal were to proceed now. *Cullen*, 811 F.2d at 711; *In re Agape*, 274 F.R.D. at 455. Furthermore, the dismissal of PBRS as a party means that it would only participate in the litigation as a foreign third-party. If the Dismissed Claims were reinstated following the appeal, so too would be its heightened obligations as a party. There is, therefore, no just reason for delay in entering a final judgment.

Finally, the Decision and Order reflect this Court's analysis of the Dismissed Claims in relation to Rule 15(b). Therefore, an appeal of the Decision and Order would be limited to this issue and an appellate court would not be deciding the same issues more than once even if there were subsequent appeals. It is therefore in the interests of efficiency to appeal the Decision and Order dismissing the claims on the grounds that the Dismissed Claims do not relate back. *See Curtiss-Wright*, 446 U.S. at 8. Immediate entry of final judgment as to the Dismissed Claims is warranted to avoid delay of resolution of the Dismissed Claims.

CONCLUSION

The Trustee respectfully request this Court enter a partial final judgment under Rule 54(b) of the Federal Rules of Civil Procedure.

Dated: December 23, 2025
New York, New York

\/s/ Michelle R. Usitalo

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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 (LGB) SIPA Liquidation (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Chapter 7 Estate of Bernard L. Madoff, Plaintiff, v. HSBC BANK PLC, HSBC BANK USA, N.A., HSBC USA, INC., HSBC PRIVATE BANK (SUISSE) S.A., and SICO LIMITED, Defendants.	Adv. Pro. No. 09-01364(LGB)

NOTICE OF UNOPPOSED MOTION FOR ENTRY OF FINAL JUDGMENT

PLEASE TAKE NOTICE that Irving H. Picard, as trustee of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, et seq., and the substantively consolidated Chapter 7 estate of Bernard L. Madoff moves before the Honorable Lisa G. Beckerman, United States Bankruptcy Judge, at the United States Bankruptcy

Court, the Alexander Hamilton Customs House, One Bowling Green, New York, New York 10004, seeking this Court's entry of final judgment pursuant to Federal Rule of Civil Procedure 54(b), on the dismissal of certain subsequent transfer claims (identified in the Order as the "Newly Alleged Transfer Claims") against HSBC Private Bank (Suisse) S.A. ("PBRS") and HSBC Bank USA, N.A. ("HBUS", and together with PBRS, the "HSBC Defendants") based on the Court's October 29, 2025 Memorandum Opinion and Order and the October 20, 2025 Order Granting Judgment on the Pleadings in Favor of the HSBC Defendants, in substantially the form attached as Exhibit A hereto, for the reasons set forth in the accompanying Memorandum of Law.

Dated: December 23, 2025
New York, New York

/s/ Michelle R. Usitalo

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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IRVING H. PICARD, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Chapter 7 Estate of Bernard L. Madoff, Plaintiff, v. HSBC BANK PLC, HSBC BANK USA, N.A., HSBC USA, INC., HSBC PRIVATE BANK (SUISSE) S.A., and SICO LIMITED, Defendants.	Adv. Pro. No. 09-01364(LGB)

[PROPOSED] ORDER ENTERING PARTIAL FINAL JUDGMENT UNDER FEDERAL RULE OF CIVIL PROCEDURE 54(b)

WHEREAS, on December 5, 2010, Irving H. Picard (the "Trustee"), as Trustee for the liquidation of the business 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 filed a First Amended Complaint (the "FAC") against HSBC Holdings plc, HSBC Bank plc, and their affiliates alleging twenty-four causes of action, including those alleged under New York law, common law, and the U.S. Bankruptcy Code. Among these defendants were HSBC Private Bank (Suisse) S.A. ("PBRS") and HSBC Bank USA, N.A. ("HBUS", and together with PBRS, the "HSBC Defendants");

WHEREAS, on December 27, 2023, the Trustee filed the Second Amended Complaint (the "SAC") alleging that the HSBC Defendants received subsequent transfers totaling:

- $283,291,567 allegedly received by PBRS from Fairfield Sentry Ltd.;
- $9,182,501 allegedly received by PBRS from Fairfield Sigma Ltd.; and
- $31,775,129 allegedly received by HBUS from Fairfield Sentry (collectively, the "Newly Alleged Transfers");

WHEREAS, on March 11, 2025, the HSBC Defendants filed the Motion and an accompanying Memorandum of Law (ECF No. 768) seeking to dismiss claims for the Newly Alleged Transfers pursuant to Federal Rule of Civil Procedure 12(c) on the basis that the Newly Alleged Transfers fall outside the statute of limitations period provided by 11 U.S.C. § 550(f) and do not relate back to the FAC under Rule 15;

WHEREAS, on April 25, 2025, the Trustee filed the Opposition to the HSBC Defendants' Motion for Judgment on the Pleadings (ECF No. 770) contending that the Newly Alleged Transfers are not untimely since they relate back to the filing of the FAC pursuant to Rule 15(c)(1)(B) in that they "arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading;"

WHERAS, on May 20, 2025, the HSBC Defendants filed the Reply Memorandum of Law (ECF No. 774) on May 20, 2025;

WHEREAS, on September 29, 2025, this Court entered a Memorandum Opinion and Order Granting the HSBC Defendants' Motion for Judgment on the Pleadings and dismissing the claims relating to the Newly Alleged Transfers (ECF No. 778) (the "Opinion");

WHEREAS, on October 20, 2025, this Court entered an Order granting judgment on the pleadings dismissing with prejudice the Trustee's Newly Alleged Transfer Claims (ECF No. 779) (the "Order");

WHEREAS, the Trustee requests that the Bankruptcy Court enter a final order and judgment on the Newly Alleged Transfer Claims as it relates to the Opinion and Order; and

WHEREAS, the Trustee further requests that the Bankruptcy Court enter a final judgment as to the Newly Alleged Transfer Claims under Rule 54(b) of the Federal Rules of Civil Procedure on the ground that immediate appellate review of the Opinion and Order, will be efficient for the courts and the parties;

WHEREAS, the HSBC Defendants do not join the Trustee's Motion or any statements contained therein, but do not oppose the entry of Final Judgment under Rule 54(b) with respect to the Newly Alleged Transfer Claims;

Accordingly, for the reasons set forth in the Opinion, **IT IS HEREBY ORDERED** that:

1. The Bankruptcy Court has subject matter jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) and (e)(1) and 15 U.S.C. § 78eee (b)(2)(A) and (b)(4).

2. For the reasons set forth in the Opinion and Order, the HSBC Defendants are granted judgment on the pleadings dismissing with prejudice the Trustee's Newly Alleged Transfer Claims.

3. To permit entry of a final order and judgment under Fed. R. Civ. P. 54(b), there

must be multiple claims or multiple parties, at least one claim decided within the meaning of 28 U.S.C. § 1291, and an express determination that there is no just reason for delay. *See Ginett v. Computer Task Grp., Inc.*, 962 F.2d 1085, 1091 (2d Cir. 1992).

4. The SAC filed in this adversary proceeding alleges multiple claims and names multiple defendants. The entry of a partial final order and judgment will finally decide and ultimately dispose of the Newly Alleged Transfer Claims against the HSBC Defendants.

5. At least one claim has been decided within the meaning of 28 U.S.C. § 1291. PBRS's rights and liabilities are finally decided—the Trustee has no right to pursue claims against PBRS as a result of the Opinion and Order. Moreover, the Opinion and Order effectively ended the litigation of the Newly Alleged Transfer Claims on the merits, left nothing for the court to do but execute a judgment entered on those claims, and amounts to a final judgment satisfying the finality requirements of Rule 54(b).

6. There is no just reason for delay of entry of a final order and judgment on the Newly Alleged Transfer Claims against the HSBC Defendants. The Newly Alleged Transfer Claims can be decided independently of the claims that remain in the SAC. The Newly Alleged Transfer Claims are thus sufficiently separable such that the interests of sound judicial administration and the realization of judicial efficiencies are properly served by the entry of this final order and judgment dismissing the Newly Alleged Transfer Claims.

7. The Trustee's request that the Bankruptcy Court enter a partial final order and judgment as to the Newly Alleged Transfer Claims against the HSBC Defendants under Rule 54(b) of the Federal Rules of Civil Procedure is **GRANTED**.

Dated: ______________________
New York, New York

____
Honorable Lisa G. Beckerman
United States Bankruptcy Judge