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*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC and  
the Chapter 7 Estate of Bernard L. Madoff*

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

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| SECURITIES INVESTOR PROTECTION<br>CORPORATION,<br><br>Plaintiff-Applicant,<br><br>v.<br><br>BERNARD L. MADOFF INVESTMENT<br>SECURITIES LLC,<br><br>Defendant.  | Adv. Pro. No. 08-01789 (CGM)<br><br>SIPA Liquidation<br><br>(Substantively Consolidated) |
| In re:<br><br>BERNARD L. MADOFF,<br><br>Debtor.  |  |
| IRVING H. PICARD, Trustee for the<br>Liquidation of Bernard L. Madoff Investment<br>Securities LLC,<br><br>Plaintiff,<br><br>v.<br><br>FALCON PRIVATE BANK LTD. (f/k/a AIG<br>Privat Bank AG),<br><br>Defendant. | Adv. Pro. No. 11-02923 (CGM)   |

**MOTION FOR ENTRY OF ORDER PURSUANT TO SECTION 105(a) OF THE  
BANKRUPTCY CODE AND RULES 2002 AND 9019 OF THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE APPROVING SETTLEMENT BETWEEN THE  
TRUSTEE AND DEFENDANT**

**TO: THE HONORABLE CECELIA G. MORRIS  
UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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–III (“SIPA”), and the substantively consolidated chapter 7 estate of Bernard L. Madoff, by and through his undersigned counsel, submits this motion 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 (the “Bankruptcy Rules”), approving a settlement, the terms and conditions of which are set forth in the settlement agreement (the “Settlement Agreement”), attached as Exhibit A, by and between the Trustee and Falcon Private Bank Ltd. (f/k/a AIG Privat Bank AG) (“Falcon”). In support of the motion, the Trustee respectfully represents as follows:

**PRELIMINARY STATEMENT**

The Trustee’s action against Falcon seeks to recover \$38,745,417 in customer property (the “Subsequent Transfers”) that Falcon received from BLMIS through Fairfield Sentry Limited and Fairfield Sigma Limited.<sup>1</sup> The Trustee’s settlement with Falcon, an entity that has ceased doing business and has limited assets, provides for payment to the Trustee of \$3,300,000.00. The Settlement Agreement represents a good faith, complete settlement of the Trustee’s claims for the benefit of the customer property fund. It reflects the fact that success in litigating the Trustee’s claims would be a pyrrhic victory given Falcon’s financial situation. The Trustee respectfully requests that the Court enter an order approving the settlement, substantially in the form of the proposed Order attached as Exhibit B.

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<sup>1</sup> This Motion is required because the alleged Subsequent Transfers exceed \$20,000,000, a ceiling established by the Settlement Procedures Order entered by this Court on November 12, 2010, Adv. Pro. No. 08-01789 (CGM), ECF No. 3181, below which the Trustee may enter into settlements with initial or subsequent BLMIS transferees without further order of the Court.

### **THE TRUSTEE’S CLAIMS AND STATUS OF THE ACTION**

In December 2011, the Trustee commenced an adversary proceeding (the “Action”) by filing his complaint against Falcon to recover the Subsequent Transfers. *See Picard v. Falcon Private Bank Ltd. (f/k/a AIG Privat Bank AG)*, Adv. Pro. No. 11-02923 (CGM) (Bankr. S.D.N.Y. Dec. 8, 2011), ECF No. 1. Falcon is a Zurich-based private bank that was formerly a subsidiary of American International Group, Inc.

On August 15, 2022, Falcon filed a motion to dismiss the Trustee’s complaint (the “Motion”), ECF No. 118, and noticed a hearing date of December 14, 2022. Among other grounds for dismissal, Falcon contended that it is not subject to personal jurisdiction in the United States. Following full briefing of the Motion, but prior to the hearing date, the parties stipulated to adjourn oral argument and engaged in extensive settlement negotiations that focused on Falcon’s financial condition. As part of these negotiations, Falcon shared recent annual reports and other financial information with Trustee’s counsel. The negotiations culminated in the Settlement Agreement.

### **OVERVIEW OF THE SETTLEMENT AGREEMENT**

As Falcon has represented to the Trustee—and its most recent annual reports disclose—it began to wind down its business operations in May 2020, has since ceased all business activity, and has limited assets, few or no staff, and no clients. Falcon’s remaining assets have been set aside to complete its wind down in Switzerland and, principally, to resolve pending and anticipated litigations, including the Action. In light of Falcon’s financial condition and intent to complete its wind down, the parties desire to settle the Trustee’s claims. The Settlement Agreement should be reviewed for a complete account of its terms. The principal terms, however, are as follows:

- Within five business days of the effective date of the Settlement Agreement, Falcon shall pay to the Trustee \$3,300,000.00 (the “Settlement Payment”) in full and final satisfaction of the Trustee’s claims;
- The Trustee will release, acquit, and absolutely discharge Falcon and its agents as set forth in the Settlement Agreement;

- Falcon will release, acquit, and absolutely discharge the Trustee and his agents and BLMIS and its consolidated estate as set forth in the Settlement Agreement; and
- The Trustee shall dismiss the Action with prejudice and without costs to either party.

### **LEGAL BASIS**

Bankruptcy Rule 9019 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.” To approve a settlement under Rule 9019(a), a bankruptcy court should find that the proposed settlement 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)).

The bankruptcy court, in determining whether to approve a settlement, should not decide the numerous questions of law and fact raised by the settlement, but rather should “canvass the issues and see whether the settlement falls 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) (cleaned up); *see also Masonic Hall & Asylum Fund v. Official Comm. of Unsecured Creditors (In re Refco, Inc.)*, No. 5-60006 (RMB), 2006 WL3409088, at \*7 (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).

In deciding whether a settlement falls within the “range of reasonableness,” the bankruptcy court considers the following factors: (i) the probability of success in the litigation; (ii) the difficulties associated with collection; (iii) the complexity of the litigation, and the attendant expense, inconvenience, and delay; and (iv) the paramount interests of the creditors (or in this case, customers). *In re Refco, Inc.*, 2006 WL3409088, at \*7; *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)).

The bankruptcy court may consider and credit the opinions of the trustee of the debtor and his or her 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 bankruptcy 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 court should consider the business judgment of the trustee and his counsel 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 court may also consider the competency and experience of counsel supporting the settlement. *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.*, 134 B.R. at 505 (quoting *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976)).

The settlement with Falcon is fair and equitable, reasonable, and in the best interest of the BLMIS estate. While the Trustee believes he would ultimately prevail, continuing the Action presents not only typical litigation risks and expenses but also the difficulties of collection of any substantial judgment against Falcon, particularly because Falcon is located in a foreign jurisdiction. By contrast, the settlement with Falcon brings substantial benefits to the BLMIS estate without further expense or risk. It would immediately augment the customer property fund via the Settlement Payment and avoid the risk of Falcon’s limited assets being further depleted by the expense of this litigation and others. Accordingly, in an exercise of his business judgement, the Trustee believes the settlement represents a fair and reasonable compromise of the Trustee’s claims. *See Declaration of the Trustee in Support of the Motion*, a true and accurate copy of which is attached as Exhibit C.

### **CONCLUSION**

Because the Settlement Agreement is well within the “range of reasonableness” and confers a benefit on the BLMIS estate and the victims of the Madoff Ponzi scheme, the Trustee respectfully requests that the Court enter an Order approving the Settlement Agreement.

### **NOTICE**

In accordance with Bankruptcy Rules 2002 and 9019, notice of this motion has been given to (i) the Securities Investor Protection Corporation; (ii) the U.S. Securities and Exchange Commission; (iii) the Internal Revenue Service; (iv) the United States Attorney for the Southern District of New York; and (v) Falcon’s counsel at Pillsbury Winthrop Shaw Pitman LLP. Notice of this motion will also be provided via email and/or U.S. Mail to all persons who have filed notices of appearance in the BLMIS proceeding pursuant to the Order Establishing Notice Procedures and Limiting Notice, Adv. Pro. No. 08-01789 (CGM), ECF No. 4560. The Trustee submits that no other or further notice is required.

WHEREFORE, the Trustee respectfully requests that the Court enter an order substantially  
in the form of the proposed Order attached as Exhibit B approving the Settlement Agreement.

Dated: July 28, 2023  
New York, New York

Respectfully submitted,

**BAKER & HOSTETLER LLP**

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Trustee for the Substantively Consolidated  
SIPA Liquidation of Bernard L. Madoff  
Investment Securities LLC and for the  
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**Hearing Date: September 20, 2023**  
**Hearing Time: 10:00 a.m. (EST)**  
**Objections Due: September 6, 2023**  
**Objection Time: 4:00 p.m. (EST)**

*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC and  
the Chapter 7 Estate of Bernard L. Madoff*

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

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| SECURITIES INVESTOR PROTECTION<br>CORPORATION,<br><br>Plaintiff-Applicant,<br><br>v.<br><br>BERNARD L. MADOFF INVESTMENT<br>SECURITIES LLC,<br><br>Defendant.  | Adv. Pro. No. 08-01789 (CGM)<br><br>SIPA Liquidation<br><br>(Substantively Consolidated) |
| In re:<br><br>BERNARD L. MADOFF,<br><br>Debtor.  |  |
| IRVING H. PICARD, Trustee for the<br>Liquidation of Bernard L. Madoff Investment<br>Securities LLC,<br><br>Plaintiff,<br><br>v.<br><br>FALCON PRIVATE BANK LTD. (f/k/a AIG<br>Privat Bank AG),<br><br>Defendant. | Adv. Pro. No. 11-02923 (CGM)   |

**NOTICE OF MOTION FOR ENTRY OF ORDER  
APPROVING A SETTLEMENT AGREEMENT  
BY AND BETWEEN THE TRUSTEE AND DEFENDANT**



**PLEASE TAKE NOTICE** that 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–III (“SIPA”), and the substantively consolidated chapter 7 estate of Bernard L. Madoff, by and through his undersigned counsel, will move before the Honorable Cecelia G. Morris, United States Bankruptcy Judge, Southern District of New York, **on September 20, 2023 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, the terms of which are set forth in the Settlement Agreement by and between the Trustee and Falcon Private Bank Ltd. (f/k/a AIG Privat Bank AG), as more particularly set forth in the motion annexed hereto (the “Motion”).

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Court’s directive, all hearings will be conducted remotely pending further Order of the Court. All parties who wish to participate in the Hearing must refer to Judge Morris’s guidelines for remote appearances and are required to make arrangements to appear via ZoomGov. For further details on ZoomGov, please call the Courtroom Deputy at (845) 451–6367. Further instructions regarding remote appearances via ZoomGov can be found on the Court’s website at <https://www.nysb.uscourts.gov/zoom-video-hearing-guide>. Pro se parties may participate telephonically in hearings free of charge.

**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 **4:00 p.m. on September 6, 2023** (with a courtesy copy delivered to the Chambers of the Honorable Cecelia G. Morris) and must be served upon (a) Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, New York 10111, Attn: David J. Sheehan, Esq.; (b) Securities Investor Protection Corporation, 1667 K Street, N.W., Suite 1000, Washington D.C.

20006, Attn: Kevin H. 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.

**PLEASE TAKE FURTHER NOTICE** that you need not appear at the hearing if you do not object to the relief requested in the Motion.

Dated: July 28, 2023  
New York, New York

Respectfully submitted,

**BAKER & HOSTETLER LLP**

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*Special Counsel to 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*

# **EXHIBIT A**

**SETTLEMENT AGREEMENT AND RELEASE**

**THIS SETTLEMENT AGREEMENT AND RELEASE** (this “Agreement”) is made and entered into as of July 21, 2023, by and between Irving H. Picard, in his capacity as the Trustee (the “Trustee”) for the liquidation proceedings (the “SIPA Proceedings”) under the Securities Investor Protection Act (“SIPA”), 15 U.S.C. §§ 78aaa–*III*, of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the substantively consolidated Chapter 7 estate of Bernard L. Madoff (“Madoff”) pending before the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), and Falcon Private Ltd. (f/k/a Falcon Private Bank Ltd., f/k/a AIG Privat Bank AG) (the “Defendant”). The Trustee and the Defendant shall together be referred to herein as the “Parties” and each, individually, as a “Party.”

**RECITALS**

**WHEREAS**, on December 8, 2011, the Trustee commenced an adversary proceeding in the Bankruptcy Court against the Defendant in an action captioned *Picard v. Falcon Private Bank Ltd. (f/k/a AIG Privat Bank AG)*, Adv. Pro. No. 11-02923 (CGM) (the “Adversary Proceeding”), to recover subsequent transfers from BLMIS under the Bankruptcy Code, the New York Debtor and Creditor Law, and other applicable laws;

**WHEREAS**, (i) the Trustee alleges that the Defendant received subsequent transfers of customer property (as defined in SIPA section 78*III*(4)) totaling approximately \$38,745,417 from BLMIS through Fairfield Sentry Limited, at least \$70,288 of which subsequent transfers came through Fairfield Sigma Limited, which invested 100% of its assets in Fairfield Sentry Limited, and (ii) the Defendant is aware of potential additional transfers from Fairfield Sentry Limited totaling \$5,611,213.71, but has not been able to verify whether such additional transfers were

completed (both (i) and (ii) referred to collectively in this Agreement as the “Subsequent Transfers”);

**WHEREAS**, the Defendant denies the Trustee’s allegations in the Adversary Proceeding;

**WHEREAS**, the Defendant asserts that it is not subject to personal jurisdiction in the United States with respect to the claims asserted in the Adversary Proceeding or otherwise, the Trustee preserves all arguments to the contrary, and, by executing this Agreement, the Parties agree that Defendant has not waived, and does not waive, its jurisdictional arguments or otherwise submit to personal jurisdiction other than to the extent expressly set forth herein;

**WHEREAS**, the Defendant represents in its annual reports that it began to wind down its business operations in May 2020, has since ceased all business activity, and has limited assets, few or no staff, and no clients; and

**WHEREAS**, in light of such circumstances, the Parties wish to compromise and resolve their disputes on the terms set forth herein, without the expense, delay and uncertainty of litigation.

**NOW THEREFORE**, for the good and valuable consideration set forth herein, the adequacy and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

1. Incorporation of Whereas Clauses.

The Parties incorporate by reference the WHEREAS clauses set forth above as if fully set forth herein.

2. Settlement Payment and Dismissal of the Adversary Proceeding.

(a) The Trustee shall file a motion under Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Rule 9019 Motion”) in the Adversary Proceeding seeking the Bankruptcy Court’s entry of an order approving this Agreement (the “Settlement Order”).

(b) Within five (5) business days of the Settlement Order becoming a final, non-appealable order (the “Effective Date”), the Defendant shall pay to the Trustee the amount of Three

Million, Three Hundred Thousand United States Dollars (\$3,300,000.00) (the “Settlement Payment”) by wire transfer of immediately available funds to the account specified on Schedule 1 attached hereto.

(c) Within three (3) business days of receipt of the Settlement Payment, the Trustee shall file a notice dismissing the Adversary Proceeding with prejudice and without costs to either Party.

3. Party Releases.

(a) In consideration for the covenants and agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trustee, on behalf of BLMIS, and/or the consolidated BLMIS/Madoff estate, hereby releases and forever discharges the Defendant and each of its direct and indirect, past or present assigns, heirs, predecessors, successors, affiliates, related entities, employees, agents, directors, officers, members, stockholders, beneficiaries, attorneys, professional advisors, staff, and representatives (collectively, the “Releasees”) from any and all past, present, or future claims or causes of action (including any suit, petition, demand, or other claim in law, equity or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorneys’ fees, costs, or disbursements) known or unknown (including Unknown Claims, as defined in Section 4 herein), that are, have been, could have been, or might in the future be, asserted by the Trustee on behalf of BLMIS, and/or the consolidated BLMIS/Madoff estate, against the Defendant based on the Subsequent Transfers, or any investment the Defendant made

with or transfers the Defendant received from Fairfield Sentry Limited or Fairfield Sigma Limited (the “Trustee’s Released Claims”).

(b) Notwithstanding and except for the Trustee’s Released Claims, the Releasees are not released from liability for any transfers they may have received, or they may receive after the Effective Date of this Agreement, that constitute subsequent transfers of customer property from BLMIS under the Bankruptcy Code, the New York Debtor and Creditor Law, or other applicable laws. The Trustee is not aware of any unreleased claims against the Defendant.

(c) In consideration for the covenants and agreements in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Defendant, on behalf of itself and its executors, administrators, and assigns, hereby releases and forever discharges: (i) the Trustee; (ii) the Trustee’s attorneys, professionals, agents and consultants; and (iii) BLMIS and its consolidated estate from any and all past, present, or future claims or causes of action (including any suit, petition, demand, or other claim in law, equity, or arbitration) and from any and all allegations of liability or damages (including any allegation of duties, debts, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, covenants, or accounts) of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability, or otherwise, based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty, or otherwise (including attorneys’ fees, costs, or disbursements) known or unknown (including Unknown Claims, as defined in Section 4 herein), that are, have been, could have been, or might in the future be, asserted by the Defendant against the Trustee based on, arising out of, or relating in any way to BLMIS, Madoff, the consolidated BLMIS/Madoff estate, the Subsequent Transfers, the Adversary Proceeding, or any investment with or transfers made from Fairfield Sentry Limited or Fairfield Sigma Limited, including any preference, avoidance, or related clawback claim that



the Defendant may have or may in the future exist with respect to the Settlement Payment in connection with any potential insolvency, restructuring, liquidation or winding down of the Defendant.

4. Unknown Claims.

“Unknown Claims” shall mean any claim released under Section 3 of this Agreement (the “Released Claims”) that a Party does not know of or suspect to exist as of the Effective Date of this Agreement. With respect to any and all Released Claims, the Parties hereby expressly waive the provisions, rights, and benefits of California Civil Code section 1542 (to the extent it applies herein), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties also hereby waive any and all provisions, rights, and benefits conferred by any law of any domestic or foreign jurisdiction that would have the effect of limiting the application of the terms of the releases set forth herein at Section 3 of this Agreement.

5. General Representations and Warranties.

(a) The Trustee represents and warrants that, as of the date hereof, he has the full power, authority, and legal right to execute and deliver this Agreement and to perform his obligations hereunder, subject to the Bankruptcy Court’s entry of the Settlement Order.

(b) The Defendant represents and warrants that, as of the date hereof: (i) it has the full power, authority, and legal right to execute and deliver this Agreement and to perform its obligations hereunder; (ii) this Agreement has been duly authorized, executed, and delivered by the Defendant and constitutes the valid and binding agreement of the Defendant, enforceable

against the Defendant in accordance with its terms; (iii) the Defendant has executed this Agreement with the full knowledge of any and all rights that the Defendant may have with respect to the controversies herein compromised, and the Defendant has received independent legal advice from its counsel with regard to the facts relating to said controversies and with respect to the rights arising out of said facts; and (iv) no other person or entity, other than those specifically identified herein, has any interest in the matters that the Defendant releases herein, and the Defendant has not assigned or transferred or purported to assign or transfer to any such third person or party all or any portion of the matters that the Defendant releases herein.

6. Additional Representations and Warranties by the Defendant.

The Defendant represents and warrants that for the six year period prior to the commencement of the SIPA Proceedings, and other than the Subsequent Transfers, to the Defendant's knowledge and belief (meaning the actual knowledge and belief of its current directors and officers), it: (1) has not received any money, funds, loans, transfers, assets, financial assistance, or financial accommodation directly from Madoff, BLMIS, or any other company or entity owned or controlled by Madoff or BLMIS; and (2) is not an immediate, mediate, or subsequent transferee of any funds or property originating from Madoff or BLMIS transferred to an initial transferee; and (3) is not aware of any claims against the Defendant by Madoff, BLMIS or any other company or entity owned or controlled by Madoff or BLMIS other than the claims referenced in this Agreement.

7. Further Assurances.

Each Party shall execute and deliver any document or instrument reasonably requested by another Party after the date of this Agreement to effectuate the intent of this Agreement.

8. Entire Agreement.

This Agreement constitutes the entire agreement and understanding between the Parties pertaining to the subject matter hereof and supersedes any and all prior or contemporaneous agreements, representations and understandings of the Parties concerning the subject matter hereof.

9. Amendment; Waiver.

This Agreement may not be terminated, amended or modified in any way except by written instrument signed by all Parties. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver.

10. Assignment.

This Agreement may not be assigned by either Party without the prior written consent of the other Party.

11. Successors.

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

12. Counterparts; Electronic Copy of Signatures.

This 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, taken together, shall constitute one and the same document. Each Party may evidence its execution of this Agreement by delivery to the other Parties of scanned or faxed copies of its signature, with the same effect as the delivery of an original signature.

13. Governing Law.

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

14. JURISDICTION; WAIVER OF JURY TRIAL.

(a) THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT. IN THE EVENT THE SIPA PROCEEDINGS ARE CLOSED BY A FINAL DECREE AND NOT REOPENED, THE PARTIES AGREE THAT ANY DISPUTE ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR THE SUPREME COURT OF THE STATE OF NEW YORK IN NEW YORK COUNTY.

(b) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

15. Expenses.

Each Party shall bear its respective expenses relating to or arising out of this Adversary Proceeding and this Agreement, including, without limitation, fees for attorneys, experts, consultants, accountants and other advisors.

16. Notices.

All notices or communications hereunder shall be in writing and delivered by hand or sent by registered or certified mail, return receipt requested, by overnight mail with confirmation, by facsimile (receipt confirmed) or by electronic means (receipt confirmed), in each case addressed and copied as set forth on the applicable signature page hereto. A Party may change its address for receiving notice by giving notice of a new address in the manner provided herein.

17. No Third Party Beneficiaries.

Except as expressly provided in Section 3, the Parties do not intend to confer any benefit by or under this Agreement upon any person or entity other than the Parties hereto and their respective successors and permitted assigns.

18. Captions and Rules of Construction.

The captions in this Agreement are inserted for convenience and reference and neither define nor limit the scope or content of any of the provisions herein. The Parties acknowledge that no Party shall be deemed to be the principal drafter of this agreement, and no ambiguities herein may be construed against any Party.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGES TO FOLLOW]**

**IN WITNESS WHEREOF**, each Party has caused this Agreement to be duly executed  
and delivered as of the date set forth above.

**TRUSTEE**

**IRVING H. PICARD, THE TRUSTEE FOR THE  
LIQUIDATION PROCEEDINGS OF BERNARD L.  
MADOFF INVESTMENT SECURITIES LLC AND  
THE SUBSTANTIVELY CONSOLIDATED  
BANKRUPTCY CASE OF BERNARD L. MADOFF**

Address:  
Irving H. Picard  
c/o Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111  
Facsimile: (212) 589-4201

  
Irving H. Picard, Trustee

With copies to:  
Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111  
Attention: Amy E. Vanderwal  
Facsimile: (212) 589-4201

Windels Marx Lane & Mittendorf, LLP  
156 West 56th Street  
New York, New York 10019  
Attention: Howard L. Simon  
Facsimile: (212) 262-1215

**THE DEFENDANT**

**FALCON PRIVATE LTD.**

Address:  
Falcon Private Ltd.  
Freischützgasse 3  
8004 Zürich, Switzerland

By:    
Name: Dr. Matteo Maccio / Andreas Bertschi

Title: CEO / Head of Legal

With copies to:  
Pillsbury Winthrop Shaw Pittman LLP  
31 West 52nd Street  
New York, New York 10019-6131  
Attention: Rahman Connelly  
Facsimile: (212) 858-1500

**SCHEDULE 1**

**Wiring Instructions**

Citi Private Bank

153 East 53<sup>rd</sup> Street, 23rd Floor

New York, New York 10022

ABA No.:

[REDACTED]

Swift Code:

[REDACTED]

Account Name:

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

Account No.:

[REDACTED]



# **EXHIBIT B**

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

|  |  |
|--|--|
| SECURITIES INVESTOR PROTECTION<br>CORPORATION,<br><br>Plaintiff-Applicant,<br><br>v.<br><br>BERNARD L. MADOFF INVESTMENT<br>SECURITIES LLC,<br><br>Defendant.  | Adv. Pro. No. 08-01789 (CGM)<br><br>SIPA Liquidation<br><br>(Substantively Consolidated) |
| In re:<br><br>BERNARD L. MADOFF,<br><br>Debtor.  |  |
| IRVING H. PICARD, Trustee for the<br>Liquidation of Bernard L. Madoff Investment<br>Securities LLC,<br><br>Plaintiff,<br><br>v.<br><br>FALCON PRIVATE BANK LTD. (f/k/a AIG<br>Privat Bank AG),<br><br>Defendant. | Adv. Pro. No. 11-02923 (CGM)   |

**[PROPOSED] ORDER PURSUANT TO SECTION 105(a) OF THE  
BANKRUPTCY CODE AND RULES 2002 AND 9019 OF THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE APPROVING SETTLEMENT AGREEMENT**

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 title 11, United States Code, 11 U.S.C. §§ 101 *et seq.*, and Rules 2002(a)(3) and 9019(a) of the Federal Rules of Bankruptcy Procedure, approving the settlement agreement (the “Settlement Agreement”) by and

between the Trustee and Falcon Private Bank Ltd. (f/k/a AIG Privat Bank AG) (“Defendant”); and it appearing that due and sufficient notice of the Motion and the relief requested therein have been given to all parties in interest as required by Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure and no other or further notice needs to be given; and the Court having considered the Motion and the Trustee’s declaration in support of the Motion; and it further appearing that this Court has jurisdiction to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334; and after due deliberation; and sufficient cause appearing therefor; **IT IS HEREBY:**

**ORDERED**, that the Motion is granted; and it is further

**ORDERED**, that the Settlement Agreement between the Trustee and Defendant is approved and authorized; and it is further

**ORDERED**, that the Trustee and Defendant shall comply with and carry out the terms of the Settlement Agreement; and it is further

**ORDERED**, that this Court shall retain exclusive jurisdiction to hear, enforce, and determine all matters arising from or related to this Order; *provided* that, Defendant shall not be deemed to have submitted to personal jurisdiction in the United States for any other purpose.

# **EXHIBIT C**

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

|  |  |
|--|--|
| SECURITIES INVESTOR PROTECTION<br>CORPORATION,<br><br>Plaintiff-Applicant,<br><br>v.<br><br>BERNARD L. MADOFF INVESTMENT<br>SECURITIES LLC,<br><br>Defendant.  | Adv. Pro. No. 08-01789 (CGM)<br><br>SIPA Liquidation<br><br>(Substantively Consolidated) |
| In re:<br><br>BERNARD L. MADOFF,<br><br>Debtor.  |  |
| IRVING H. PICARD, Trustee for the<br>Liquidation of Bernard L. Madoff Investment<br>Securities LLC,<br><br>Plaintiff,<br><br>v.<br><br>FALCON PRIVATE BANK LTD. (f/k/a AIG<br>Privat Bank AG),<br><br>Defendant. | Adv. Pro. No. 11-02923 (CGM)   |

**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 SETTLEMENT AGREEMENT**

1. I am the trustee (the “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 chapter 7 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 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 settlement agreement (the “Settlement Agreement”) by and between the Trustee and Falcon Private Bank Ltd. (f/k/a AIG Privat Bank AG) (“Defendant”).

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

3. In my business judgment, I believe the terms of the Settlement Agreement fall well within the range of reasonableness and, accordingly, this Court should approve the Settlement Agreement. The Settlement Agreement provides that Defendant shall pay \$3,300,000.00 in full and final satisfaction of the asserted claims. The Settlement Agreement resolves all issues between the Trustee and Defendant 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. Litigating the claims to conclusion would also further diminish Defendant’s limited remaining assets and present significant collection difficulties in a foreign jurisdiction.

4. Given the complexities involved in proceeding with further litigation, and Defendant’s financial situation, I have determined, in my business judgment, that the Settlement Agreement represents a fair compromise of the claims against Defendant.

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

Executed on July 28, 2023.

/s/ Irving H. Picard

Irving H. Picard, Trustee